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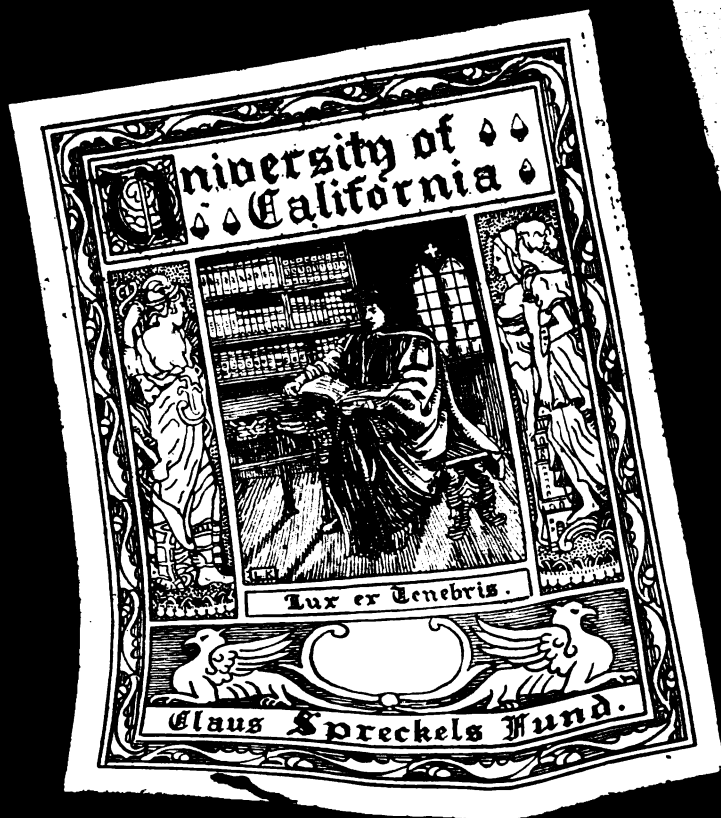
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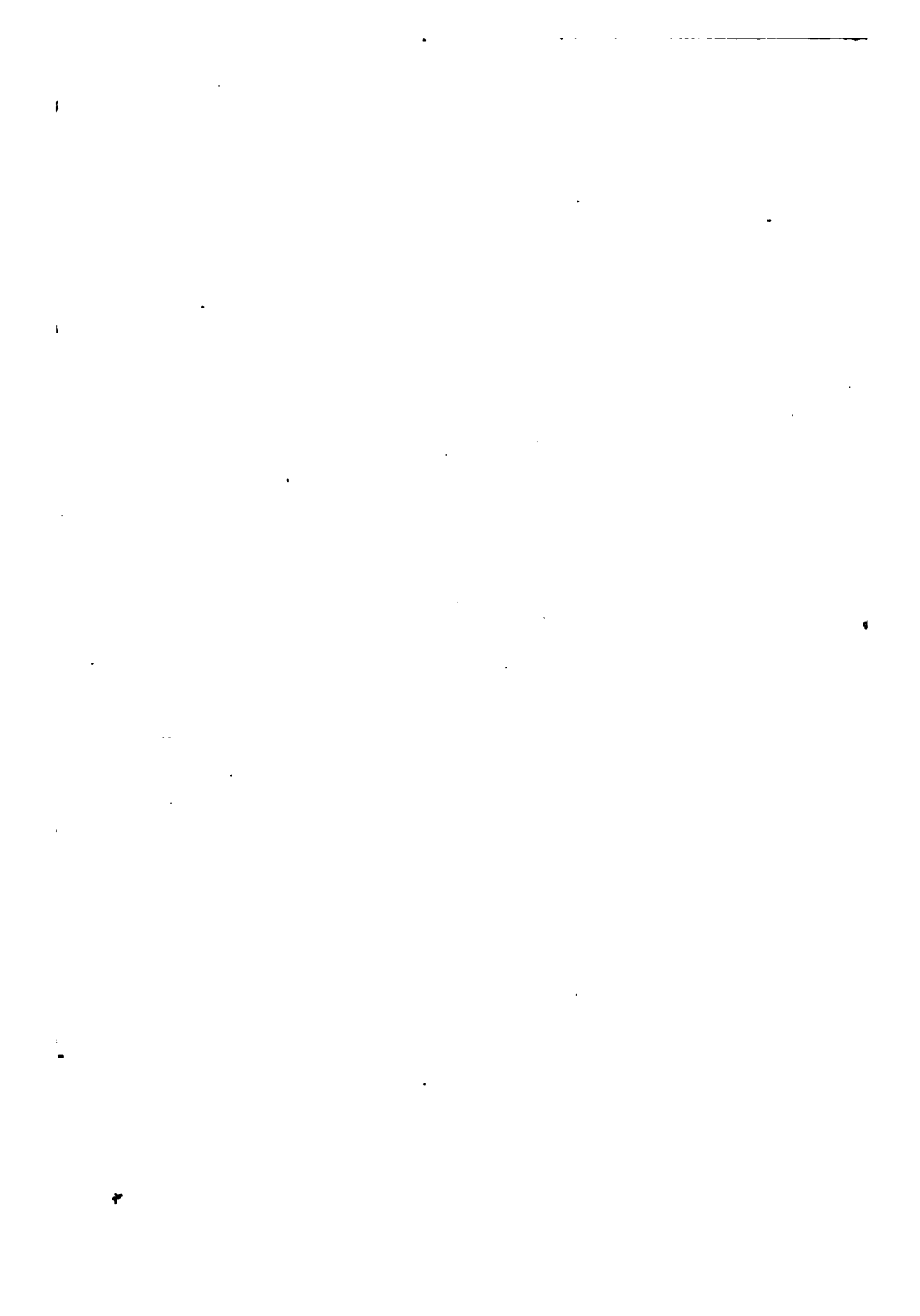
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**HISTORY**  
**OF**  
**THE ENGLISH PARLIAMENT.**







Wm. G. G. G.

1870-1871

1871

# MINUTE PARLIAMENT

THE HOUSE OF COMMONS

1870-1871

1870-1871

THE HOUSE OF COMMONS

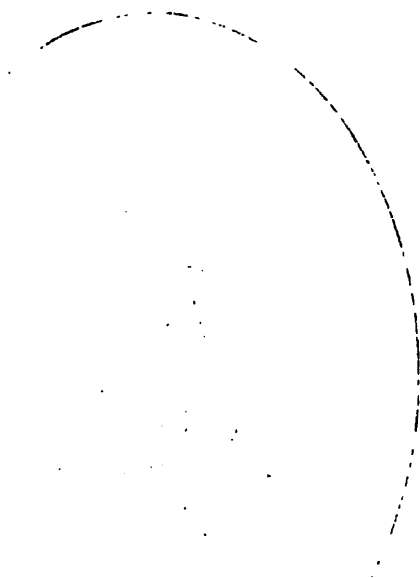
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THE HOUSE OF COMMONS

1870-1871



(S. 100)



HISTORY  
OF THE  
ENGLISH PARLIAMENT,  
ITS GROWTH AND DEVELOPMENT  
*THROUGH A THOUSAND YEARS.*

800 to 1887.

BY  
*Heinrich Hermann*  
DR. RUDOLF VON GNEIST,

AUTHOR OF "THE HISTORY OF THE ENGLISH CONSTITUTION,"  
*Professor of Law at the University of Berlin.*



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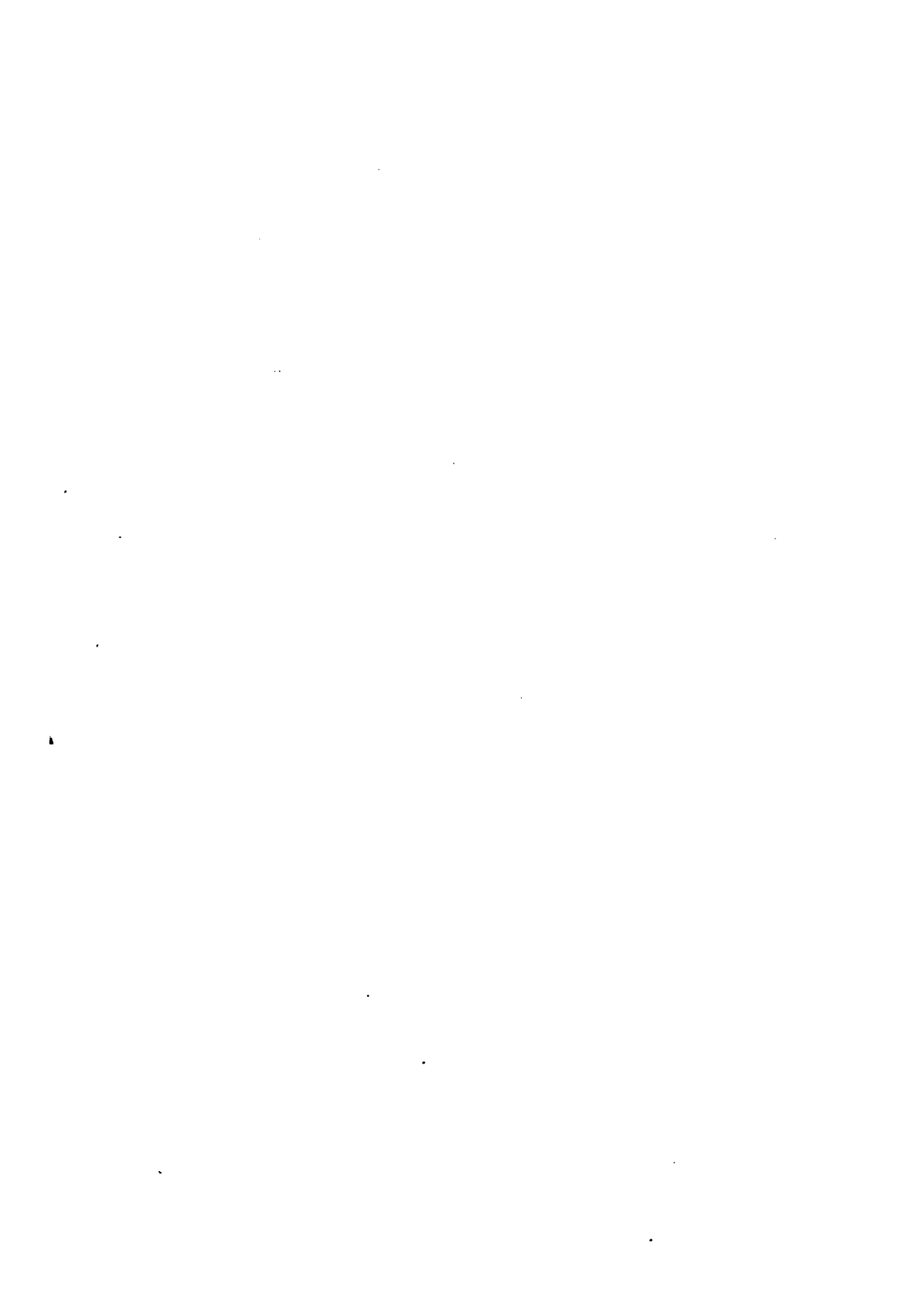
## TRANSLATOR'S PREFACE TO THIRD EDITION.

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**T**HIS new English edition of Professor von Gneist's celebrated work on the English Parliament will, it is hoped, thoroughly meet the requirements of the numerous class of students for whom it is specially intended. As the proofs have all passed through the author's hands, the public may also feel satisfied that they here possess Professor Gneist's own work. The translator may in fact state that, notwithstanding the acknowledged difficulties presented by Dr. von Gneist's terse and vigorous style, he has nowhere found it necessary to depart from a close adherence to the original, in order to produce what he trusts will be found a perfectly clear and fluent version.

A. H. KEANE.

UNIVERSITY COLLEGE, LONDON,  
*October, 1889.*



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## INTRODUCTION.

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### PARLIAMENT AS CONNECTING-LINK BETWEEN STATE AND SOCIETY.

**T**HE time is past when the Constitutions of France or England were regarded by Germans as universal models. When we attempted to imitate them in practice we arrived at the conviction that the institutions of foreign countries cannot be adopted without modification. But ever ready as we are to acknowledge what is good in other nations, we should still remember how much we owed to those prototypes during the transition to our present political status, and that some of their very fallacies, such as the doctrine of the "division of powers," have, after all, been productive of more good than evil. Nor can there be any doubt that a thorough knowledge of the French and English systems is of great importance for the further development of our own position, since the homogeneous constitutions of those great cultured peoples reveal to us their fundamental principles far better than the Germanic State, encumbered as it has been with endless varieties of separate political fragments.

The English Constitution is, by its national character,

more closely allied to us Germans, and hence especially adapted to our purpose. But for this is needed an insight into the whole of that organism, in which the many-sided development of the English administrative law, and the discipline acquired by self-government, are as essential elements as is their combined action in Parliament. Such thorough knowledge of the English Constitution is no doubt better adapted than the history of any other State to promote that "practical" view of politics which is so much in favour at the present time.

For centuries the cultured European peoples have eagerly sought to grasp the true character of the State from the very "nature" of man himself. Every inquiry starting from this idea arrived at the conclusion that, as a rational being, man was free and equal to his brother-man. But all attempts to put this theory in practice soon made it equally evident that, when viewed from a different aspect, all men were neither free nor equal. Nay, all theories that based the State on a so-called "public contract" (*contrat social*), as well as those concerning the equality and common brotherhood of men (*liberté, égalité, fraternité*), resulted in grievous disappointment. Thus it happened that for a time all arguments about "natural right" fell into discredit, and philosophy began to think of retracing its steps, instead of boldly advancing to a more searching investigation of that human nature, a single element of which—that of free will—political science had hitherto alone kept in view, while disregarding the determining influences of the surroundings.

The present development of the European States

has, through mighty catastrophes, advanced the growing consciousness of mankind one important step towards a recognition of the truth that man is not only a rational and moral, but also an animal being. This double nature having been intended by Providence, and being innate to man, asserts itself also in human society, so that the State itself can be explained only by this double nature, at least in its organic connection with Society.

As an *animal being*, man is, in the first place, endowed with various individual racial peculiarities. But socially his existence depends, more than that of any other created being, on the satisfying of the most diverse outward wants ; there are none whose childhood is so feeble, so prolonged and helpless, whose riper years are so deficient, whose old age is so dependent and full of suffering.

To satisfy these wants man depends on the bounties of the nature that surrounds him, and, in order to make use of these, on the co-operation of his fellow-men. The progress of civilization has been marked by a constant increase of those bounties, and of the human forces which man requires to maintain himself at his present high level of development. Accordingly every individual is animated with an irresistible longing for those external resources, and to command those human energies which subserve his wants. For the acquisition, possession, and enjoyment of these riches, interdependent circles are formed in human communities, representing in settled abodes a powerful organism which, in this narrowly-defined sense, we term "Society." But inseparable from this social system

is the eternal principle of the dependence of the needy on the affluent. It is this dependence that curtails freedom in the State, bringing about that everlasting conflict of interests, which strive, on the one hand, to strengthen, on the other to relax or remove the shackles of thralldom. And thus arises in every social system that persistent endeavour of the wealthy classes to unduly influence the administration, in order to prevent the poorer classes from acquiring wealth by means of various legal restrictions, such as laws against alienation of property, and by the formation of close guilds, monopolies, and so forth.

So long as there survives in the wandering tribe the consciousness of a common descent from one "common ancestor," the paternal authority of the chief suffices to uphold the hereditary constitution of the community. State and Society are as yet undivided. But when the tribe settles down in a permanent home, that organization of Society begins which gradually develops into what is generally called "State." The first settlements are effected by families which take up permanent quarters in adjoining localities. According as these settlements develop into village communities, the idea of private property becomes strengthened. Whilst the soil is still regarded as a common possession, the notion of separate property takes its rise in the household utensils and furniture, the stable, the farmyard, and goes on extending in an ever-widening circle. It satisfies an urgent, continually-increasing want ; for, as population increases, as the standard of comfort rises, the necessities of existence can no longer be produced by a system of farming conducted in common.

For the same reason, private property becomes an immutable institution.

But hand in hand with the growth of personal property inequality of ownership is also developed, partly by force or tact, partly by family connection and inheritance. Henceforth those settlers, who were originally free and equal, become divided into classes, the division extending to the family groups, and continuing from generation to generation, until the descendants are permanently fixed in the social caste of their ancestors. Every kind of possession begets its special kind of dependence, although landed property, the most widespread in mediæval times, creates the most absolute servitude, while also affording the best means of strengthening and securing it from attack. Hence it was that, among the heterogeneous elements scattered over Europe by the migrations of the barbaric peoples, this social system prevailed in its crudest form, developing class privileges of the most absolute character, and constantly intensifying the degradation of the indigent. Poetry and legend, the history of the customs and manners of the time, as well as the "*leges barbarorum*," afford evidence of the deep chasm that yawned between the two great sections of the community, and of the ruthless nature of that dominion of class over class.

But *Christianity*, its most potent antidote, is now seen emerging from this flood of social barbarism.

The consciousness of the existence of God is as deeply rooted in human nature as is the keenest sense of social interest. Man feels that he has been created by God, not only for his own good, but also for that of

his fellow-men. Aristotle already declared that it was "easier to conceive a city without a house, than a State without the belief in the gods." Antiquity bequeathed to us the Ten Commandments as the foundation of our moral code. But with the higher commandment addressed to the inner man, "Love thy neighbour as thyself," Christianity opened a new epoch in the history of mankind. A sudden outburst of religious feeling in a moment of inspiration or of deep emotion, is, however, not sufficient for the needs of human life ; for the tendency of self-interest to form selfish resolutions is ever active. The check supplied by a moral sense of duty will be efficacious only when it is felt to spring from an absolute, a divine commandment. It is this consciousness alone that enables man still to follow in his resolves the narrow border-line between interest and duty, and thus to obtain that sure impulse of the will which we term "character."

But even from this point of view isolated man appears unable to attain his destiny. As in his material wants, so also in his moral development, he depends on the family, the community, and the nation, in order to translate his consciousness of God into acts. In this community of men the religious feeling, in order to assert itself aright, requires the organisation of a "Church ;" it needs permanent institutions which afford religious instruction and spiritual assistance, and enable him to practise those human duties which silently but effectually elevate the character of Society.

This inner remedy, moreover, impels the human will to assert itself in the outward forms of *State* and *Law*.

As in every crisis the resolutions of man turn on the necessity of reconciling duty and interest, this direction of his will finds an outward field of action whenever his impulses are concerned with the sphere of action of his fellow-citizens, with their person, their family, or property. Hence arises the *Moral Order*, standard of all outward action, self-appointed norma of social life. But passion and selfishness overstep this barrier, and compel the community itself, taught by experience, to acknowledge a *compulsory code*, as well as a moral order. The patriarchal principle once abolished, the settled populations usually adopt a republican form of government under freely-chosen magistrates.

At this stage arise the first forms of popular assemblies, the first institutions enforcing obedience to the commands of the authorities, and that customary law which grows out of the legal instincts of Society.

But the more a people is, by character, prone to violence, the more does it need a strengthening of the authority of its magistrates, after the precedent and example of the Church. As the oppression of the weaker by the richer classes increases, the freely-chosen magistrates become less capable of maintaining law and order. Thus the republican constitution survives only where free communal property has remained the material foundation of the Commonwealth. But where, on the other hand, the Germanic tribes were intermingled with Romanised populations, or where the original form of occupation gave rise to a marked inequality of possession, there was developed the hereditary monarchical system. The offices of

chief leader of the "host," of highest judge, and of supreme liege lord, became permanently united in one family. In this hereditary principle the idea of the State found its permanent embodiment, independent of all dominating influence on the part of the wealthy classes. The kingly office became the steadfast mainstay of an organized body of executive officers, and of a legislation overriding the narrow interests of the ruling classes.

On the Continent, however, the consolidation of the principal nationalities under their respective dynasties did but increase for the moment the struggle for political hegemony, which at last came to a close about the beginning of the ninth century, with the recognition of a common paramount king, and a common paramount bishop. The united Empire and the united Church were the common bases, whereon the international law and the civilization of the Continent were slowly but uniformly developed.

So far, the legal and political development of the Teutonic settlements in Great Britain had followed the same course as those on the Continent. But in consequence of the Norman Conquest (1066), the royal prerogative acquired such an extraordinary increase of power, that in England the period of absolutism was already reached in the eleventh and twelfth centuries, modifying, in a very striking manner, the relation of the wealthy classes to the Crown. The connection of State and Society, of Church and Society, of Church and State, was very similar in Germany and England, but in the latter country the periods of greater or less power of these several factors followed one another in



a totally different *order* ; hence the cause of the chief differences obtaining in the German and English Constitutions.

The organic *connection of State and Society* has also resulted in England from the fact that the State stands constantly in need of the energies, the personal services, and the wealth of the community. But the higher services which the State demands can be efficiently rendered only by the higher classes of society, and these services weighed far more heavily on the wealthier classes in those days than in our own time, for in the Middle Ages the produce of the soil was the sole standard of wealth and the only source of revenue. The greater landed proprietors, and the lesser owners who held between three and five hides of land, having to bear the entire burden of equipping, training, and maintaining the military forces, enjoyed, as a matter of course, the position of "*optimates*" or "*meliores terræ*." Early mention also occurs of their services in the varied capacities of legislators in the great popular assemblies, of jurymen at the regularly recurring sittings of the law courts, of officers charged with the duty of keeping the king's peace, and so forth. Thanks to these relations, the assemblies of the nobles had even in Anglo-Saxon times already acquired a highly influential position, and with this corresponded an aristocratic organization of the shires.

The Norman Conquest broke through this connection, and subjected the Estates of the Realm, together with the privileges they had already secured, to a well-nigh absolute monarchy. The legislative assemblies disappeared, and the local self-government

became transformed to a thoroughly organized provincial administration by royal prefects (bailiffs). But this despotic interference of the Crown brought about a result which was not foreseen. By subjecting all freehold property to a fairly graduated obligation of service in the army, in the administration of justice, the maintenance of order, and the levying of taxes, royalty became itself subservient to the nobles, and thus prepared the way for the development of the sturdiest aristocracy in Europe. Conscious of the justice of its claims, and borne up by the identity of interests of all the propertied classes, the nobility rose at the time of the Great Charter against the absolute power of the king, obtained a share in the constitution and administration of the State, and, in recognition of such participation, henceforth inevitable, the monarchy, from the reign of Edward I., accorded to it its fair and equitable position in the system of English self-government.

While the just influence of property was thus sufficiently guaranteed, the English Crown was, on the other hand, strong enough to hold in check the social aspirations which aimed at the exclusion of the dominant class. The frequent removal of the great vassals from their possessions, and the prevention of the formation of entailed territorial lordships, checked the rise of a dominant nobility, which did not appear in England till the close of the Middle Ages, and then only in very limited numbers. The alienability of fiefs held by knight-service, and the gradual abolition of manorial jurisdiction, hindered the growth of a lower nobility, which first arose under the Stuarts, and then also in

modest numbers, and without political privileges. As in the boroughs also police administration was in the hands of royal justices of the peace, the development of close guilds was greatly impeded, so that in but few towns the local government was actually in the hands of corporate bodies. The otherwise moderate restrictions to industrial pursuits were confined to the towns, which the free exercise of all handicrafts remained a fundamental principle of the common law. The same royal police functions, gradually superseding the exercise of baronial jurisdiction, also upheld the right of free change of domicile, thus preventing the growth of serfdom. At the same time the strong judicial power of the Crown held together all social classes under one civil and criminal administration, under one legal code for family and property, thus again preventing the rise of separate jurisdictions for knights, burgesses, and yeomanry. But the loss of such separate class-interests was the gain of the commoner class as a whole (*communitas*), and the counties and boroughs thus similarly organized acquired that firm cohesion which was the cause of the ever-increasing share taken by the House of Commons in the business of Parliament. The energetic and independent activity of the higher and middle classes, the steadfast discharge of the obligations imposed by law and the common weal, combined with the self-control and law-abiding sentiment fostered by the habitual fulfilment of public duties, tended to develop that power of resistance which successfully thwarted the despotism that had reappeared in the time of the Stuarts. This solid groundwork of Parliamentary life attained its greatest

strength at the end of the eighteenth century, but it became shaken and loosened by the intrusion of the new social elements of modern industry, and has thus been forced into the new developments of the nineteenth century. Owing to this new movement, we see England at the *end* of this century in a position in many respects analogous to that of the Constitutional States of the Continent at the *commencement* of their parliamentary existence.

The organic *connection of Church and Society* springs from the necessity of securing to the chastening influence of religion the permanent power it should exercise on the life of the people. In order to acquire any influence over an essentially selfish and stiff-necked generation, whether by religious teaching, the cure of souls, or beneficent and humanising institutions, the Christian priesthood needed to be endowed with a permanent revenue arising out of landed property, to be incorporated, and to enjoy an exalted position among the wealthy classes of the population. And as the increasing intercourse of the nations of Europe in the Middle Ages brought about a uniform evolution of culture, so the mediæval Church grew into a universal divinely-appointed religious organization, superior to the secular authority itself. She thus came to be habitually regarded by contemporary populations as a higher power, until at last Christianity became an inherent and vital element of the Commonwealth.

At an early period the Anglo-Saxon settlers on British soil zealously embraced the fundamental principles of the Christian doctrine; but from the outset they showed a remarkable resistance to certain pecu-

liarities of the Roman Church, especially to the "worship of images" and to the celibacy of the secular clergy. Doubtless the Norman Conquest enforced an outward conformity, but even at the framing of the Great Charter the national tendency of the English Church made itself distinctly felt, and proved so strong that it not only absorbed the discordant Norman elements, but, in the dispute between king and pope, asserted an uncommon degree of independence.

But the very social influence which, so long as it continued, enabled the Church to fulfil its great mission, became a danger to the Church through the social interests of the individuals through whom the divine idea is realized. The rich endowment of the Church at the time of its foundation among the newly-converted people, the steady increase of these possessions through the influence exercised by the clergy on the dying, the maintenance of this wealth in mortmain, lastly, the position of the Prelates at the head of the ruling class, gradually made worldly possession and power the main object of clerical institutions. Since the thirteenth century the divine office of teaching and preaching, of guiding and comforting the people, was abandoned to poorly-paid vicars and to mendicant friars, whilst the vast estates of the Church, bringing it more and more into association with the secular nobility, served to sustain the clergy as a ruling class. But even during the fourteenth century this very wealth, aggrandizement, and dominion of the Church rendered the Papal administration so worldly and degraded, that in England, as elsewhere, a section of the

clergy and laity became estranged from the Church of Rome. Through its greed of civil power the religion of love and charity had thus become transformed into one rather of discord and persecution. At the beginning of the fifteenth century (1401) the first heretics were burned in England just when the Church had well-nigh surrendered its religious character. Instead of the former coherence, we now perceive a growing dissension between clergy and laity, which was increased by the foundation of a separate clerical Parliament (Convocation). During the terrible struggles of the fifteenth century, the Church as an institution seems stripped of all moral influence. The Reformation of the sixteenth century, forced upon the nation by the king for his own selfish purposes, was unable to restore the old sympathetic touch between Church and laity, until in the reign of Elizabeth, after severe trials, the Reformation became a living force, and struck deep roots in the heart of the people of England. The Church became once more a bond of union for the nation, intimately associating itself with the laity in the House of Lords, as Justices of the Peace in the management of parochial affairs, and through ecclesiastical patronage. Yet the English Reformation had been so superficially carried out, that the dissenting elements, kept down by main force, played once more an important part in the civil wars of the seventeenth century. Only after long and severe struggles did the Anglican Church win its way to the heart of the nation, herein aided mainly by the vain attempt of the Stuarts to bring about a violent Catholic reaction.

At the beginning of the eighteenth century it

comprised, with unimportant exceptions, the entire population of England and Wales, and was bound up once more with the most vital interests and the ideas of the ruling classes of Society, being admittedly at the same time exposed anew to the peril of worldly-mindedness and ambition. In the nineteenth century, the clerical side of the groundwork of the parliamentary constitution has been still more shaken and unsettled by the rapid increase of Dissent, by the emancipation of the Presbyterian, the Roman Catholic, and other denominations, and thus has a new problem of legislation originated, which Germany had to tackle already two centuries ago.

The *organic connection between Church and State*, which appears in the England of our day as a new problem, had been a reality during the Middle Ages, having been attained through the subjection of the States of Western Christendom to the see of Rome. When the great pact was made between Pope and Emperor at the beginning of the ninth century, the English monarchy had doubtless held somewhat aloof, but after the Norman Conquest it conformed, and under John it even reluctantly submitted to a solemn recognition of the suzerainty of the Pope. An attempt to unite the Lower Chamber of the House of Convocation with the House of Commons proved an absolute failure, and only increased the estrangement which had meanwhile set in, and thanks to which the clergy had, after a weak show of resistance, accepted the Reformation at the hands of an arbitrary and selfish monarch. By the declaration of the Royal supremacy, the old conflict between "*Imperium*" and

"*Sacerdotium*" was apparently settled ; yet so superficial was the expedient, that a strong body of Dissenters rose up against the Royal supremacy, and even turned the scales in the political struggles of the seventeenth century. After many vicissitudes peace was at last established at the end of the seventeenth century, and the harmony between the King in Parliament and the Church was restored in the course of the eighteenth century. A united Church in a united State henceforth became the fundamental principle of English parliamentary government. But this principle has already received a rude shock in the present century through the successive emancipation of the other denominations.

In presence of a plurality of Churches, enjoying equal rights, England also has now to learn that religion, while it is the strongest bond of social *union*, may become the strongest element of *discord* in the State ; hence that the State is bound to set certain legal limits to the autonomy of the conflicting Churches, and to establish some new and general institutions, with a view to preserve the unity of the moral and intellectual development of the nation.

Out of the reciprocal relations of these elements of national life arose, "as highest Council of the Crown," the Parliament of England, which from century to century found itself placed in an essentially different attitude towards the Crown on all questions of might and right. Yet from shreds of this constitution, as it existed in the eighteenth century, attempts have been made to fashion a universally acceptable ideal of representative government. Such attempts, overlooking the



fundamental principles, could result only in an imitation of the outward uses and abuses of the English Parliament, leading to those disastrous misconceptions from which European nations are still suffering.

In order to avoid a barren discussion *pro et contra* "Parliamentarism," the author has endeavoured all his life through to convey a clearer exposition of the two hitherto neglected phases of English political life—viz., the "History of English Self-Government" [iii., ed. 1871] and the "History of English Administration" [iii., ed. 1883–84], and to combine these in a "History of the English Constitution" [1882]. The third main division of English political life—viz., the Parliamentary Constitution, might have been left to younger hands after the materials for the whole fabric had once been brought together. Such a revision by some competent authority would have been highly desirable as a test of the fairness and accuracy of the body of evidence gathered from those two sources by the author. But inasmuch as his hope has, as yet, not been fulfilled, the author has undertaken this third task also, which he has endeavoured to carry out, for the time being, in a short and popular form. The constitutional history of a great nation is in itself difficult to set forth, but even without the complicated apparatus of a strictly scientific work, it may be placed in an intelligible manner before an educated public.

The narrative, thus simplified, brings before the reader in nine essays a very varied description of Parliaments which, to a superficial observer, might seem to be Parliaments of so many different nations. Yet when contemplated in connection with the public

administration and the communal life, as here introduced from the author's "History of the English Constitution," these assemblies are found to be pervaded by an inner unity, which is elsewhere absolutely unparalleled. When the inquiry is thus concentrated on the form and standing of the various Parliaments, fresh aspects of an orderly connection constantly present themselves, by means of which many disputed points are cleared up. In every epoch this inner unity enables us to solve problems, which even in England are still regarded as insoluble.

In this biography of the representative assemblies of a great and highly-gifted nation, often revealing its true character by slight traits, an inner unity and continuity manifest themselves throughout the course of a thousand years, as if these were but nine days in the life of a man of honour, who through all the trials and errors of his mortal life remains true to his nature and to his convictions. But in order to arrive at this result we shall have to discard the traditional method of treating English Constitutional History. The English habit of thought, which connects the History of the Constitution with parties and individuals, might have sufficed so long as the fundamental conditions of the parliamentary constitution were supposed to be fully understood and were taken for granted. Such fundamental conditions, however, no longer exist, in consequence of the radical change that has supervened in Society and in the electoral bodies. We, therefore, now need a connected exposition of the *institutions* in living connection with their reciprocal operations. And thus, by a kind of vivisection as it were, that

*organic defect* will be revealed which has developed itself in the English body politic of our own time, and which will render impossible a continuation of that government by rival parliamentary parties which has hitherto prevailed. The weather forecast of the approaching future may, for this reason, point only to "storm,"—possibly violent, far-reaching, long-lasting tempests,—but it points also to a triumph over this new peril. Our hope is justified by the past history of the English nation, as well as by the experience of our own people, who have likewise had to pass through severe trials in order to arrive at their present stage of development. May this biography of the Parliament of England contribute, at a critical moment, to sustain the confidence cherished in the triumph of the good cause.





# I.

## The Anglo-Saxon Gemōtes.\*

### TABLE OF KINGS.

EGBERT, 800-836.	EADWARD THE MARTYR, 975-978.
ÆTHELWULF, 836-857.	ÆTHELRED THE UNREADY, 978-1016.
ÆTHELBALD, 857-860.	EADMUND IRONSIDE, 1016.
ÆTHELBERT, 860-866.	CNUT, 1016-1035.
ÆTHELRED, 866-871.	HAROLD HAREFOOT, 1035-1039.
ÆLFRED, 871-901.	HARTHACNUT, 1039-1042.
EADWARD THE ELDER, 901-924.	EADWARD THE CONFESSOR, 1042-1066.
ÆTHELSTAN, 924-941.	HAROLD II., January-October, 1066.
EADMUND, 941-946.	
EADRED, 946-955.	
EADWI, 955-959.	
EADGAR, 959-975.	

THE political history of England may be said to begin about the year 800, a date when that of the other civilized European lands also first assumes distinct outlines after the subsidence of the great floods

\* The most complete survey of authorities and literature of the Anglo-Saxon period is afforded by Lappenberg in his "Geschichte von England," vol. i., Introduction. (Hamburg, 1834.) The laws of the period in Reinhard Schmid's "Gesetze der Angelsachsen." Second Edition, 1858. A collection abounding in historical data is contained in W. Stubbs' "Select Charters and Illustrations of Constitutional History," Second Edition. (Oxford, 1874.) A well-digested history of this period is contained in Lappenberg (as above), vol. i., and a legal history in Conrad Maurer's "Münchener Kritischen Ueberschau," vols. i., ii., iii. English researches by Kemble, "The Anglo-Saxons in England," 1489. Sir Francis Palgrave, "The English Commonwealth," 1831-32. Valuable recent information on this period is contained in Freeman's "History of the Norman Conquest," vols. i., ii., iii., and in Stubbs' "Constitutional History," vol. i., Chapters I.-VIII.

of barbaric migration. All preceding events, however interesting to the student of ethnology and human culture, may for our purpose be regarded as belonging to the pre-historic period, in which, after long and obscure struggles, those elements of land and people were fashioned which imparted to England her characteristic physiognomy on taking her place in the comity of European nations.

The inhabitants of the Isle of Britain, mainly Celtic, came first into contact with the Roman Empire through Cæsar's bold campaigns. Some hundred years later, this led to a lasting subjection, and to the consequent introduction of Roman provincial administration, under which the section of the population that had been reduced remained purely passive ; while the independent tribes preserved their strongly-marked national characteristics, exhibiting stubborn resistance, amid varying fortunes, to Roman and northern invaders alike. The comparatively early introduction of Christianity, and the protection afforded by the hardy Roman legions, had imparted to the conquered portion of the race certain elements of Roman civilization. But the gradual pressure exercised by the great migrations on the western portion of the Roman Empire during the reign of Honorius had severed the legions in Britain from the centre of authority. Thenceforth (406), for about thirty years, Britain, though belonging, nominally, to the Roman Empire, had its own emperors and usurping rulers. But after it had vainly applied to Rome for protection against the invading hordes of barbarians, there ensued a formal severance from the Empire and the consequent expulsion of all Roman functionaries.

"The spectacle Britain then presented," says Lappenberg,\* "is at once one of the saddest and most striking in the whole range of history. It was emancipated from the greed of the Roman procurator, and freed from the overbearing arrogance of the imperial cohorts. But this very freedom, for which the people were indebted neither to their own courage nor to their higher aspirations, left them wholly unprotected against foreign invasion. Never did a nation so speedily relinquish a cultivated language, which to many generations had become a mother-tongue. Never did the Christian religion so quickly and thoroughly lapse into heathenism and unbelief. Such was the pitiable fate of the land whose nationality, trampled under the heel of the Roman conqueror, had retained no power to withstand its savage foes." On the cessation of the Roman sway Britain had become a centre of internal feuds, and an object for plunder to invading hosts, when, about the middle of the fifth century, two northern sea-kings, or chiefs, bearing the legendary names "Hengist" and "Horsa," found a footing, at first, as paid allies, and, subsequently, as conquerors. Soon followed smaller or larger bands of Low German stock, presumably from Holstein and the districts of the lower Elbe, some invited by their fellow-countrymen, others in search of new settlements and tempted by the hope of plunder. Amid conflicts with the hardy British tribes and their northern neighbours, the Saxon military settlement advanced slowly into the land, founding petty states,

\* Compare Lappenberg, *op. cit.* p. 63. The slight influence exercised by the Roman elements of culture is shown also by Mommsen, "Römische Geschichte," vol. v., Chapter "Britannien."

such as "Essex," "Sussex," "Wessex," which retain their Saxon designation to the present day.

Jointly with these Saxon intruders mention is made of the Angles, who with wives and children migrated bodily from the "land of Anglen"—that is, the territory between the Schley and Flensburg and surrounding districts, so that this part of Schleswig is described as remaining long afterwards uninhabited. In the petty states north of the Thames, such as East Anglia and West Anglia, this tribal name survived for centuries, and at last gave the name of Anglia to the whole land, either in contradistinction to the continental Saxons, or because in their secluded settlements the Angles had preserved a firm coherence. But in any case, by their speech they formed part of the great Saxon stock. And the assumption that they were of Thuringian origin is certainly based on very doubtful authority.

A third element in the colonization were the Jutes, who occupied the small kingdom of Kent, the Isle of Wight, and a limited portion of Wessex. Subsequently, these tribes on British soil became scientifically grouped as "Anglo-Saxons," a designation which is as foreign to popular, as it is to legal usage.

The picture presented by these military colonies during the first two centuries resembled in some degree the throng and pressure of the great Germanic tribes on the mainland. There prevailed constant strife for the possession of fertile tracts of land and for plunder, during which the weaker members became merged in the great seething mass. The smaller principalities merged gradually into larger states, which



eagerly strove for a *de facto* or a *de jure* ascendancy. Amid these conflicts a general conviction was fostered by the Christian clergy that, in such a complexity of petty states, peace, well-being, and morality could develop only out of the union of the Church, of the military, civil, and judicial functions under a united monarchy. Such a monarchy was founded by Egbert in the year 800, when he united all the kingdoms south of the Trent in a single state under the name of England.

In striking contrast with the Carlovingian empire, the establishment of this monarchy was followed by a series of events which have exercised a decided influence on the progressive development of England. After countless conflicts, continued for many generations, and consequently all the more disastrous to the weaker side, the Britons, already enervated or lapsing into barbarism, were at last completely crushed. The urban settlements dating from Roman times fell into decay, the elements of the old Roman culture, with Christianity itself, vanished from the land, the original population was partly driven to the uplands, partly reduced to thralldom, or to the condition of an impoverished peasantry. Hence in England those peculiar relations are absent which in Western Europe were brought about by the intermingling of the Germanic intruders with a Romanized provincial population, with a Roman culture, a Roman provincial and ecclesiastical organization. On the other hand, the Conquest had the result of loosening the ties of kindred that naturally bound them to their country. Some of the single settlements were formed, apparently,

through the emigration of small tribes, but in the gradual progress of colonization fresh migrations took place, somewhat resembling those of the "marches" or borderlands in east Germany, thanks to which the earlier settlers became commingled and increased by the arrival of fresh immigrants.

After the occupation of the country it was distributed among the new-comers, the smallest allotment to a freeman bearing arms being a plough or hide of land (*hida, familia, mansus*); and as the settlers mostly found land that had already been under culture and under Roman provincial administration, they regarded not only the "roof and holding," but also the soil itself, as their personal property and inheritance, the pasturage and right of chopping wood being alone held in common. An early and well-defined development of individual right of property, as well as of the power of transfer by deed and by will, was soon established. From the time of King Alfred the name "bóc-land" (book-land) occurs, as designating free ownership in land. All unallotted lands remained as "common property" of the dominant tribe, under the name of "folk-land," which, by special grant, might mature into "bóc-land."

Individual property in land speedily became the efficient cause of *inequality of ownership*. Already, at the time of the settlement, larger allotments had been made to the numerous chiefs and leaders, and this inequality was intensified by later strifes and feuds. At the same time the number of those in the densely-peopled districts who, at the time of settlement, had received no allotments, or who through

subsequent distributions and testamentary dispositions became dispossessed, went on continually increasing. To such free-men there was nothing left but to enter into personal service in the household of some landowner, or in quality of "settlers," to rent a piece of land ("laen-land") in consideration of "suit and service" rendered. This arrangement entered into the normal economy of the large estates, and the dependence thus established became practically hereditary. The system continued to grow through public calamities and the voluntary surrender of the small holdings in time of war, and in time of peace through the increase of population, fresh distributions, and alienation. The indescribable misery occasioned especially through subsequent Danish inroads, contributed to destroy the prosperity of the free peasantry, and to render the ascendancy of the great landowners still more marked.

Thus, through the development of individual ownership, the old family organization of peasants fitted to bear arms merges into a system of lasting seigniorial-right, at an earlier period, and on a more extended scale at least than in Germany. The old inheritance of "common liberty," the considerable amount of the "wehr-gild," and the personal protection afforded by law to the "liber homo," were certainly still preserved to the lack-land class. But in all other respects the encroachment of the large estates on the small holdings, and the oppression of the dispossessed freemen below the level of the common freedom, became more and more pronounced.

From this evolution in the relations of ownership,

the conception of the "*kingship*" is seen to arise in England, while in the old homes of the nearest allied Continental tribes no such title anywhere occurs at that time. Hence it may be taken for granted that its appearance among the Anglo-Saxons was due to social conditions which grew out of the original settlement. Nor was the kingship developed during the early period of occupation, although the conquering tribes were led by chiefs who belonged to families renowned in war (*nobiles*). The victorious leader also remained at the head of the intruding bands on the conquered land, and the transference of his leadership from father to son seemed as natural as the inheritance of the distributed soil itself. Nevertheless, like relations ultimately arose also among the democratic tribes on the mainland. The kingship, in fact, begins to exist, first as soon as the office of chief is regarded not merely as one of leadership, but as an all-embracing supreme authority, involving the functions of judge, the maintenance of order, and a protectorate over the Church; secondly, when such superiority comes to be looked upon as the perpetual privilege of some family renowned in war. The new legal conception then becomes embodied in the equally new designation of "*cyning*" (king), a term, however, whose origin still remains an open question.

When the broad divisions of the land were firmly settled there were constituted towards the beginning of the seventh century seven or eight kingdoms of greater or less extent: Kent, Sussex, Essex, Wessex, East Anglia, Mercia, Deira, Bernicia. The two latter, however, were at an early date merged in the ancient

kingdom of Northumberland. To this group history has assigned the name "Heptarchy." In course of time, however, conditions highly favourable to supremacy were found united in the kingdom of Wessex, whose King, Egbert (800-836), established his authority over the smaller states up to the River Humber. The period of peaceful development immediately following the consolidation of this monarchy was certainly interrupted by the savage depredations of the Norse vikings. But these were succeeded under Alfred the Great and down to the death of Edgar (871-975) by the most brilliant epoch of Anglo-Saxon history, which has left us copious materials regarding the body politic, that is, in the mediæval sense, regarding the military, judicial, and ecclesiastical organization in their several relations to the Crown.

The *military* system of the Anglo-Saxons was founded on the obligation of all to bear arms. By this was meant the duty of every freeman to obey, in person, the summons to arms, to equip himself, and to live throughout the campaign, at his own cost. The impossibility of a uniform discharge of this duty by the freemen lay at the root of every transformation occurring in class relations throughout the Germanic world. But the Anglo-Saxon kingship, in direct contrast with the Carolingian monarchy, never succeeded in determining, under purview of the law, the apportioning of the war burden. The equipment of the army continued to be an object for deliberation at the Shire-courts and Hundred-courts, whence necessarily resulted an unequal and withal a defective organization. Hence, during the Heptarchy, the chiefs were driven by the

constant wars to have recourse to other expedients, such as equipping armed bands from among their own free household and retainers, and keeping them ready at their personal summons. All court functionaries bore from the first a military character. The prospect of plunder, of honour, favours, and reward also attracted freemen to the Court. Hence around the petty kings there was constituted a first levy or well-trained troops, thus more and more restricting levies *en masse* to cases of extreme emergency. After the disastrous Danish wars, a blending of the two systems seems to have been effected under Alfred, so that the larger holders of five hides and upwards entered into a relation of personal service as *thaini Regis*, while the common freemen were, as a rule, employed only in building and guarding the castles, and repairing the highways (*trinoda necessitas*).

The *legal system* had its mainspring in the proceedings of the freemen under control of some self-established superior authority. As in the case of the military service, the participation at stated periods in the popular courts with their numerous jurymen presupposes an independence bound up with the possession of one "plough-land."

But regular attendance is an indispensable preliminary condition of such a judicial system, as he who appears only now and then can never become imbued with the legal spirit, or familiar with legal usage. Hence through the division of landed property the circle of law-men in the popular courts became narrowed down to a smaller group of peasant proprietors, who by their regular attendance and acquaintance with

the customary law acquired the distinctive designation of "Witan," or the wise men. The great landowners also soon began to form courts of their own, in which their tenantry and retainers fulfilled their legal relations to the landlord and to their fellows, while still remaining outwardly members of the common courts.

Against the abuses arising out of this severance of local jurisdiction the freemen found their only protection in the position of the supreme authority. In the united monarchy the King, as hereditary dispenser of justice, ruled with a firm hand over lords and freemen alike; and his representatives prevented the dissolution of the provincial courts by subjecting them to some central control, and regulating the proceedings more in accordance with the requirements of the neighbouring districts.

From the time of Alfred there appear, subordinate one to the other, two distinct local Courts :—

I. *The Hundred-court*, "hundred-gemót," meeting monthly, in the narrower circuit of the divisional district, for the decision of civil suits amongst freemen, for judging petty criminal offences, and for transaction of formal law business.

II. *The Shire-court*, "shir-gemót," which met twice annually, to exercise the power of inflicting criminal punishment, to settle disputes amongst the inhabitants of the various Hundreds, to determine questions of law amongst more influential parties, and for the dispatch of other business incidental to higher Courts.

This organization already bears the character of a State-system. The Shire-court is held by the "ealdorman," appointed by the King; in conjunction with him

a shir-geréfa, for the carrying out of the sentences, the enforcing of fines, the maintenance of the peace, and, already from an early period, presiding as representative of the Ealdorman. In the Hundred-court appears, in like manner, the shir-geréfa, or a special "bailiff," as holder of the court, and here again the common free-men from the immediate neighbourhood exercise their powers as men of court. Hence the century from 871 to 975 was also the period of consolidation, when land and people settled down in such firmly constituted groups, that the framework has continued with wonderful steadfastness down to the present day. The naming of the English "shires" and "hundreds" dates from this century, in which the Anglo-Saxon laws expressly name the districts of Shires and Hundreds as divisions of the kingdom.

The "tithings" in the older histories are erroneously regarded as the lowest local divisions of the "hundred," although a grouping in *decania*, or tens, might otherwise be referred to the military system of the Teutonic peoples. But among the Anglo-Saxons this division broke down under the enormous development of great landed estates, and of the royal jurisdiction over retainers and tenantry. Hence the small groups of free peasant proprietors failed to secure a uniform local constitution.

It was only at a later period, from the time of Edgar, that, under the so-called "peace pledge," the still surviving yeomanry and the lack-land freemen, unattached to any master, became united in tithings with a responsible president (tithing-man, head-borough). In the manorial districts the thane possessed a like responsibility in regard to his retainers and peasantry. Thus



the local jurisdiction under the later kings assumed a highly complicate character. We find (1) Large seignorial estates, on which the local bailiffs combined an administrative control with the position of Court bailiff over the tenantry. (2) Smaller groups of persons originally free, who, for the more convenient administration of justice, were united under a royal or seignorial *geréfa*, and exempted from the legal duties of the hundred. (3) Royal, and also partly seignorial "burhs," mostly surrounded by walls, placed under a special *geréfa*, who held triennial *burhgemóts* analogous to those of the hundreds. (4) The rest of the freemen, hemmed in between these broad seignorial divisions, but often scattered in isolated groups, who had safeguarded their old privileges. By means of the legally organized system of tithings this class was now united under a responsible functionary, constituting no longer anything more than a supplementary element, a remnant of communal government for common freemen.\*

In closer unity was organized the Constitution of the *Church*, which, having been accepted and endowed by the Anglo-Saxon kings, acquired under royal patronage

\* The system of local administration throughout mediæval times involves many obscure points. But on the whole it is clear that the extensive settlement of colonists on allotted lands, the attachment of free peasants to a civil protector (*Hlaforð*, Lord), and the extension of the manorial courts to the free peasant, had formed the foundation of the territorial system in England. On the other hand, it was still the State (the King) that conveyed authority to the landowner, and which the territorial Court extended to the *liberi homines* with right of criminal jurisdiction. To this two-fold relation was afterwards superadded the Norman feudal supremacy, which took over the manorial Courts, with equal readiness recognizing, restricting, or abolishing them.

a strongly-marked national character, as seen in the bishoprics and archdeaconries which were established on the lines of the Heptarchy and of the later county divisions. The English Church also laid the groundwork of legal protection against the sale and maltreatment of women, children, and "theowes" or thralls. She it was who first secured to the ceorl a day of rest, his own earnings, and a more effectual emancipation. She it was who first established houses of education for the higher ranks, while the lower clergy and the monks were found assisting all classes by their counsel and their teaching. She it was who first softened manners, fostered skill and industry, peaceful intercourse, and the systematic care of the poor. To her was due the regulation of marriage on a moral basis, and the further elevation of the position of women. In the administration of justice she gained influence by reason of the frequent introduction of the oath in connection with matters before the courts, and by controlling the legal ordeal by "fire and water." As leader of the Shiremót, the bishop took his stand side by side with the King's representative. The Church entered into the communal life for the discharge of duties which in the temporal constitution of the Middle Ages had hitherto been overlooked.

From this framework of Army, Courts of Law, and Church, in conjunction with ownership in land and spiritual functions, were evolved the *relations of all classes*. The duty of bearing arms was bound up with the land acquired by force of arms. The dispossessed freemen entered into lasting dependence on the land-owners, while the peasant proprietors themselves fell

into a state of many-sided villenage. Throughout the whole rural population a tendency towards servitude grew apace, constantly striving for legal recognition. Fealty and obedience of lieges and retainers to their laws thus became positive duties at law. Higher military, legal, or ecclesiastical services led to the recognition of a higher estimation, of higher rights, and a higher standing in all matters connected with "wer-gild," penalties, and peace-pledge, thus constituting the first steps towards the formation of privileged social classes. Domestic power, exercised over the members of the household, the laen-men, and settlers on the estate, developed into a superior authority, which, for ordinary intercourse, practically constituted the only available Court of law for the dependent section of the community. With the mutual growth of these relations there sprang up a class of landowners who, through the course of ages, slowly advanced to the condition of an hereditary order. Three classes may already be clearly distinguished: the Great Thanes, the Shire Thanes, and the common freemen, the last-mentioned, thanks to a surviving remnant of old national freedom, being still distinguishable from the servile class by birth. The people thus became more and more distinctly grouped in the two great classes of *eorls* and *ceorls*; that is, the governing and the governed, the lord and the liege.

In accordance with this broad classification there were grouped round the monarchy the periodical GENERAL ASSEMBLIES OF THE WHOLE NATION; that is, of the fully-privileged section in its actual distribution. This was itself analogous to that which prevailed among the other Teutonic tribes, and which

must here claim our attention in order to understand what has to follow.

The ancient democratic popular and judicial assemblies, as described by Tacitus, originally existed only for the smaller communities (*civitates*) somewhat analogous to the small Swiss cantons in later times. But this original groundwork soon became modified through the influence of the landowners after the settlement. The regular military service and right of arbitration in the Courts then became centred in the middle and higher classes of land proprietors. Thanks to their habitual engagement in military and legal duties, a still narrower group of officials was formed, who, under the distinctive name of *Witan*, or the wise men (*boni, probi, legales homines*), assumed somewhat of a professional character, to the gradual exclusion of the so-called *umstand* ("bystanders" or "outsiders"), that is, the general body of inferior freemen.

With the fusion of the smaller communities (*civitates*) in larger national groups and states, the general assemblies of the people ceased altogether. Such meetings had, on geographical and economic grounds, become no longer practicable. Hence the representation of the whole nation through the *boni homines* was further restricted to a still narrower circle of the *meliores seu optimates terræ*, that is, to the most distinguished members of the military, legal, and ecclesiastical services, and hand in hand with the disparity of ownership there usually arose a kingship hereditary in some family which stood at the head of these select assemblies. To the King also lapsed not only the right of determining time and place of

meeting, but also the personal summons of the *meliores terræ*, one privilege following necessarily from the other. The summons was issued with due regard to recognized personal distinction, and with a view to deliberation on military, legal, and Church affairs, for which the King stood in need of their ready co-operation. Thus it came about that the national assembly became the *consilium regis*.

The original folkmotes of the Anglo-Saxon tribes passed through precisely the same phases. The most complete survey of extant records relating to 147 Anglo-Saxon national assemblies is furnished by Kemble ("Saxons in England," ii., cap. 6). Unfortunately, only brief notices have, as a rule, survived, which, like old mutilated inscriptions, require a hundred interpolations in order to gain an insight into the actual relations. As the majority of data are given, by learned clerks and chroniclers, in the Latin tongue, it is necessary to bear in mind that the national designation of things and persons is most arbitrarily and diversely translated into Latin, and that, accordingly, not much weight can be attached to these various renderings. The national assemblies are, at the caprice of the writer, diversely styled *consilia*, *conventus sapientum*, *principum*, *optimatum*, *magnatum*, *procerum*. (The name "parliamentum" first appears, as will be shown later on, in the thirteenth century, and even then, and still for a long time after, is used alternately with the above expressions.) The Saxon designation of the assemblies was "gemót," frequently also with an adjunct, as "michel-gemót" (great assembly), at times as "Witenagemót"

(assembly of the "Witan," that is, of the "*sapientes*"). The latter designation, frequently occurring in Anglo-Saxon chronicles, has passed into historical use under the name of "Witenagemóte."

All extant evidence is unanimous as to the relatively small number of persons who took part in the gemót. The significance of this fact will be fully weighed further on, after passing in review the objects of deliberation as revealed to us by the same evidence. They were, on the whole, obviously identical with those which, during the Carovingian epoch, were discussed in the great national assemblies of the Continent. Allowing for the altered conditions of the times, the inference seems justified that they dealt with much the same class of subjects as those mentioned by Tacitus, when these gatherings still took place in the circle of small tribal groups (*civitates*), the freemen of the district meeting together in order personally to discuss and decide upon matters of common interest. In modern phraseology these may be divided into the three categories of *legal*, *political*, and *ecclesiastical* affairs.

I. Essential objects of deliberation were at all times the *changes possibly needed in the traditional common law* (the *jus terræ*, or *lex terræ*), that is, in modern language, the fundamental principles of the laws of property, family, and household, the customary appointment of legal experts, as well as the procedure in case of suits instituted for the safe-guarding of personal right and enforcement of legal satisfaction and penalties. This "common law," growing out of social life, held good throughout mediæval times among the Teutonic peoples as the inborn right of the freeman, subject to

no change, without his assent. This fundamental idea of "right," from which the conception of "law" has developed in our modern constitution, stood in mutual operation with the constitution of mediæval judicature. This judicature being subject to no higher authority, but terminable only by a popular Court acting to the best of its free judgment, as with the Scabini of Carlovingian procedure, a popular vote was needed from the first to induce the free arbitrators to introduce new laws. Hence so long as legal courts continued to be filled by men of legal standing (*judicia parium*), a barrier was opposed to the controlling power of the temporal authority. Thus no change in the fundamental principles of this judicature could have any efficacy without the decision of an assembly, which afterwards came to be regarded as a national council. During mediæval times the "Court of justice" and the "legislative Assembly" continued to be closely connected. Under the expression "gericht" (Court of Justice, Court of Law, Tribunal) was understood every kind of local, district, or shire assembly, which was concerned not only with litigation, but also with all public matters in these several jurisdictions. This constant commingling of judicial and legislative functions also continued in the Witenagemotes. In the national council the King exercised a complementary judicial authority both over the powerful lords, for whom no competent tribunal (*judicium parium*) existed in the shires, and altogether in all cases of miscarriage of justice (*defectus justiciæ*).

The modes of procedure in the courts and in Parliament have always influenced each other by the reciprocal

imitation of their forms ; and as in mediæval times the Court of Law was necessarily conceived as a deliberative body of Witan under the control of a superior authority, so the framing of new legal principles could be effected only with the concurrence and assent of some higher Witan acting under the control of the Crown. The evidence bearing out this view occurs over and over again in almost identical terms throughout Carlovingian and later mediæval times (*Lex consensu populi fit et constitutione regis*). In like manner, the resolutions of the Anglo-Saxon popular assemblies, in every century, tend to show that the legal decisions handed down from their forefathers could not be ratified by the King alone, but also required the assent of the people, or of the Witan representing them. For instance, in the seventh century we find, touching the law of Wihtraed : "Then the great lords, with the consent of all, came to a resolution upon these ordinances, and added them to the customary laws of the men of Kent." In like manner King Alfred says : "Many laws that seemed not good to me have I set aside, with the consent of my Witan, and I have ordered that these same laws should be put in force, when refashioned." Again, in the ninth century we read, touching the legal enactments under Æthelred : "This is the Ordinance the King of the English has selected and fixed upon, with the consent of his spiritual and temporal advisers." How far this fundamental doctrine was still in force during the Norman period will be shown later on.

II. *The most important measures and regulations bearing upon the temporal commonweal, that is, all*



ordinances bearing on military affairs, sessions of the courts, and the maintenance of peace, form a subject ever varying with the times and the changing relations of the administration. In this respect, also, the Anglo-Saxon national councils form a continuation of the democratic cantonal gatherings.

Decisions respecting the levying of a national war, involving the duty of every freeman to equip and maintain himself during the campaign, were passed with the solemn assent of the assembly of the people. On the other hand, their concurrence was not needed for summoning persons otherwise bound by contract to personal service on the King, either in virtue of some office at Court or in any other way. The endless feuds of the petty states before the fusion of the Heptarchy were, in great measure, carried on exclusively by means of such personally attached retainers. This description of military service was apparently further developed in a large way under King Alfred, when the large owners of five hides and upwards entered into a relation of Thaneship with the King, receiving in return a higher rank, and an extension of their seignorial and civil authority in their own demesnes. Even in later times, a resolution of the Witan was, except in case of extreme emergency, regularly asked for, in order to secure their voluntary co-operation during the course of the war.

The same holds good as regards conclusions of peace, which, in the days of petty sovereignty, constituted one of the most important objects of popular decision. Even under the monarchy in Alfred's treaty with the Danes, for instance, it runs as follows:—"This is the

peace, which Alfred the King, and Gythrum the King, and the Witan of the whole English people, and the people assembled in East Anglia, have all settled, and with oaths confirmed." Also when, under stress of war, a peace was concluded without such concurrence, there was needed for the enforcing the same a further resolution of the Witan ; as, for instance, in regard to the disgraceful peace with the Danes, in the year 994, we find, " That it has been frequently renewed, and by the Witan ratified."

Simple regulations touching the external administration of justice, that contained no modification of national law, the King might, indeed, prescribe of his own accord, just as such regulations are frequently to be met with in the Carolingian Capitularies. But whenever such regulations were meant to establish a lasting ordinance, involving important consequences, it was still advisable to ask for the concurrence of the Witan, as the laws of the Anglo-Saxons contained various prescriptions, having quite as much reference to the administrative side of justice as to law-giving.

In like manner, the kings could issue injunctions for peace, and for maintenance of civil order in the land. A prerogative of this kind might be derived as well from his position as Lord of War and Lord of Justice. For the effectual preservation of peace, however, the warrant of the Witan was, in troublous times, urgently advisable ; and in order to give to such injunctions a lasting character as national enactments, numerous and important civil regulations were adopted with the concurrence of the Witan solemnly assembled in the National Councils. The defective legislation regarding military

matters is fully balanced by the carefully elaborated local and district civil organization, as regulated by the Anglo-Saxon legislature. This is especially the case as regards the surety of the landlords for their domestics and their Thanes, the surety of the rural authorities (*præpositi*), in respect of the still free peasantry, and, further, a surety for the appearance of the accused before the judge, as well as a co-surety for penalties incurred, which subsequently became the groundwork for police arrangements which later on had still more far-reaching consequences.

Lastly, if no mention occurs of legislative control over financial matters, it should be remembered that the State, as then constituted, administered only through performances *in kind*, and that a system of taxation was of later date. The conquered land, so far as it was not portioned out in private ownership, was looked upon as being originally "folk-land." The use of this "*ager publicus*" was truly, in great measure, left at the disposal of the King, serving mainly for the maintenance of his household expenditure, of his officials, and armed retainers, just as in the Carlovingian Empire the "*Cæsaris fiscus*" forms only a personal house revenue, while the needful expenditure for the army, the Courts of Justice, and the maintenance of peace was mainly supplied by performances *in kind*, obtained from the subjects. Should, however, a portion of the "folk-land" become assigned, either by way of gift or loan to the Church, or to private persons, the assent of the people, that is, of the Witan, was required, and this assent was in innumerable cases obtained for these very concessions. A first step towards a right of levying

taxes in cases of emergency was made during the disastrous wars with the Danes in the form of the so-called "*Danegelt*."

III. Lastly, *legislation bearing on Church matters* forms a special province of its own. The introduction of Christianity, and its recognition as the religion of the State, came about through the solemn resolutions of the King, with the concurrence of the Witan. But as soon as the ecclesiastical hierarchy was acknowledged, and the Church endowed with considerable possessions in land and rich revenues, a kind of division of authority ensued. Laws which concerned purely Church matters were in the National Council exclusively settled by the ecclesiastical Witan, while on matters of a temporal and mixed character the spiritual and temporal lords deliberated in common. Objects within scope of the general resolutions of the National Council were, the introduction of ecclesiastical tithes, and some other matters of Church revenue, as also the keeping holy of the Sabbath, and the stricter observance of fasts and feasts. The question of the introduction of monastic orders was repeatedly discussed by the Witan, but without resulting in any formal resolutions. On the other hand, the prohibition of marriage within certain degrees of kindred, as well as the personal privileges of the clergy, were unquestionably objects of general legislation. Provisions concerning the internal service of the Church and Church discipline were left entirely to the ecclesiastical authorities.

Surveying the region of judicial, administrative, and Church legislation in its entirety, we may already infer, from the objects of deliberation, that such councils

could not have been gatherings of the whole people, as in times when a cantonal sovereignty prevailed. A deliberation upon new rules of law, conclusions of peace, civil regulations, and Church matters of a mixed character, could not possibly have been settled in one or two days in an assembly consisting of many thousand persons.

To this consideration must be added other cogent circumstances of a pregnant character. After the fusion of the smaller continental tribes in larger national groups, it may be inferred, even apart from the negative testimony derived from the silence of historians, that national assemblies, in the older sense of the word, could never have existed among the Goths, Franks, and other great Teutonic peoples.

Such gatherings had become geographically impossible through the foundation of fixed settlements scattered over a wide expanse of territory. A consideration of the state of the public highways in those days, the means of transport, of conveying supplies, and so forth, shows at once that to speak of a gathering of a hundred thousand men to deliberate on laws, treaties of peace, and so on, involves something like a contradiction in terms. It is further evident, from the strongly republican constitution of the Saxons, that matters of common interest were discussed only by a limited number of representative deputies. From the very nature of the case, the national councils must have been changed to some form of representative assemblies, while necessity and custom required those arriving from remote districts to be accompanied by numerous retainers and attendants. Hence the large

assemblies of the Carolingian monarchy were restricted to a review of the armed forces combined with a Council of the great lords.

In a somewhat smaller degree, all these fundamental relations hold good also as regards England at least from the time of the fusion of the small kingdoms. In a land \* covered with forests, and intersected by deep streams or extensive fenny tracts, and indifferently provided with means of communication, even attendance at the county assembly must have been hard to combine with the necessary pursuits of agriculture. It seems altogether impracticable to require every freeman to betake himself to distant places wholly unknown to him, to undertake a journey perhaps from Essex to Gloucestershire, in the cold Christmas season, or about Eastertide, when it was important for him to attend to the culture of his land. How could he be concerned with laws touching any other portion of the country save the one in which he lived? Even in much later centuries it was difficult to get the far more advanced populations of the towns to interest themselves in State affairs which went beyond the range of their parochial interests or the levying of taxes.

Hence throughout mediæval times the summons to attend National Councils was mainly regarded as an irksome duty, which all would have gladly declined. As time and place of meeting was always changing, the summons had to come from the King. There being no other practical way of carrying the matter out, the same mode of constituting the national assemblies prevailed for hundreds of years in the most diverse

\* Compare Kemble, "Anglo-Saxons," vol. ii., cap. 8.

European States. Although not expressly so stated, it is almost certain that even in those times the summons was issued by the hand of the King's secretary (Chancellor) in the form of a gracious writ of summons, just as they were subsequently drawn up in antiquated Chancery style. The summons could be addressed only to persons whose presence the King might require, and from whose council and co-operation, in matters relating to war and peace, law and order, Church and morals, a certain authority and influence might be expected.

On general regulations relating to the summons to arms and warlike expeditions, the leaders had necessarily to be consulted. A leadership, conferred by the fact of landed possession, was now enjoyed by the great Thanes, with their numerous retainers, trained to the use of arms. The rightful leadership, however, was ascribed to the Ealdormen, nominated, for the most part, from that very class, or to the warlike high court officials, or to Thanes inured to war, and entrusted with high command.

General regulations and changes in common law had, necessarily, to be deliberated upon by those who had the customary control of the courts. These were, again, the Ealdormen appointed by the King, and, in conjunction with them, the more distinguished Shiregerefás; but, apart from these officials, the great Thanes likewise, as lords in their own courts, also the great Thanes, independently of such offices, with jurisdiction over their own vassals.

Church matters had necessarily to be advised upon with those who had the conduct of education and the

care of souls ; that is, with the Bishops named by the King, and, in conjunction with them, certain Abbots also, by reason of the flourishing condition of the larger monasteries. The larger landed possessions of the Prelates placed them, as a matter of course, on a level with the great Thanes, conferring on them, in conjunction with their spiritual dignity, precedence even over the lords temporal. The persons best qualified were selected for the continuous conduct of business.

It was of urgent interest to the Crown itself to allow persons to take part in such proceedings who were estimable alike for their counsel and energy ; and as a participation in the assembly was a very burdensome duty, there does not appear, in historical records, any trace of a contention for a claim to any such summons ; on the contrary, a considerable portion of the summoned must, at all times, have devised grounds for being excused from attendance.

From these considerations the statements may be understood which bear upon the persons composing the National Councils. But it should be again remembered, that the *clerici* charged with the drawing up of the records have oftentimes translated into their own Latin, and with arbitrary variations, the names of offices, and the rank of the persons concerned. For instance, in a full national assembly, held at Winchester in the year 934, there are described as being present the King, as well as four Chiefs from Wales, two Archbishops, seventeen Bishops, four Abbots, twelve Ealdormen, fifty-two Thanes (*ministri*), in all, ninety-two persons.

The greater number of extant records bear a smaller



number of signatures, those especially dating from the earlier centuries, previous to the union of the monarchy, and also those of later times, when National Councils were often summoned for special parts of the kingdom. The number of the signatures would, on an average, be smaller than the number of those taking active part in the proceedings, inasmuch as after those of the greater officials further signatures were regarded as unnecessary. Characteristic in this respect is one record, dated 855, running thus: "In the presence of, and with the signatures of all the Archbishops and Bishops, of the King of Mercia, of King Edmund of East Anglia, of the Abbots and Abbesses, of the *duces*, *comites*, and *proceres* of the whole land, and of an 'innumerable throng' of other lieges who have all acknowledged the Royal decree, but to which the holders of offices of dignity (*dignitates*) have appended their names." In another record it is said that *all* the foremost persons of the kingdom have undersigned; and then follows:—the King, two Archbishops, the Queen, eleven Abbots, nine Ealdormen (*duces*), and twenty-six Thanes (*milites*); and so with numerous other records.

The accounts referring to later periods have led to much error in respect to the Anglo-Saxon National Council. It is sometimes spoken of as a House of Lords, sometimes as a House of Commons, although in reality it was neither, and least of all an assembly voting the public imposts in the later sense of the term.

No mention occurs of the representation of an hereditary class, for the privileges attached to great landed estates seldom evolve this idea of an aristocracy by

birth before the sixth generation. The Anglo-Saxon period recognizes such a position only in the nearest members of the royal household (*Athelingi, Æthelingas*).

Nor is there any representation of a well-defined class of great landowners. The combination of high office with the possession of large estates is doubtless already an accomplished fact ; but the two functions are not yet legally connected, not yet so conditioned as to give the landowner a right to the enjoyment of any public office.

Nor in the Witenagemôte is there any mention of representation by election, for ecclesiastical dignities, Thaneships, and offices of Court did not rest upon popular election.

Least of all is there any trace of a borough representation, for the walled towns (*burhs*) were still fully comprised in the Shire organization, and, at most, placed under the administration of a special burgh-reeve.

From the style and manner of the Public Records, it is at once evident in what sense such assemblies were regarded as a representation of the whole nation. It is the powerful influence and recognition of personal worth that determines the temporal commonweal of the Germanic people throughout mediæval times, and this also explains why, down to the close of that period, there is no question of counting the votes of majorities and minorities at elections and public deliberations. It was regarded as a matter of course that in the battle-field the captain should fight at the head of his men, and that the others should follow him ; and that in the judicial assemblies a recognized expert in law

should draw up the formula. Still more circumscribed was the circle of those who in the Shire Courts had the right of moving resolutions. In a still more marked degree the privilege of proposing and supporting measures in the great National Councils was left to the recognized authorities in ecclesiastical, military, and legal affairs. All this is but a return to the old mode of procedure in the district assemblies of the *civitates* as described by Tacitus :—

“The eldest (*princeps*) opens the proceeding ; then each man speaks according as distinguished by age, family, renown in war, or eloquence. No one commands, only the personal dignity residing in him exercises its influence. No distinction of rank exists. The assembly determines, and its determination is law. Proposals when deemed acceptable are hailed with loud acclaim and clash of arms ; a loud dissenting shout rejects what appears unacceptable.”

Despite all transformations in State and Society, this old procedure of a warlike popular assembly continued in force in the councils of nobles in later centuries. The freeman never renounced his right to take part in the general deliberations. Nowhere has a decided limit been set to such participation by the formulating of any law (*census*). But the circle of those “distinguished by age, family, renown in war, or eloquence,” had become gradually narrower and narrower, the more the importance of the higher offices had increased throughout the kingdom, the more the ascendancy of the wealthy classes made itself felt through the increasing inequality of their holdings, the more this superiority itself became enhanced by the connection of office with property

necessitated by the rude economic system of mediæval times. This process ranges through every connecting link existing between State and Society.

Already in the narrow circle of the Hundred-court, in which the daily interests of the smaller free community were still indirectly determined, and in which they still took part, according to their powers, judgment was left to a still narrower circle of experienced and elderly residents (Witan), who by their habitual attendance had become the interpreters of the customary law. The others stand around as "bystanders" (*Umstand*), and ratify the sentence by signifying their approval; but they also at times still dissent, and by such dissent compel the introduction of other arbitrators. In the later forms of appeal this original relation continues in force.

In the wider circle of the Shire-court there appears usually only a small group of large landowners, and of local officials and freemen especially summoned to the assembly. Hence here also the casual "bystanders" from the neighbourhood retire still more into the background. This predominance was intensified in the national Witenagemōt, to which were specially summoned the chief landowners, the highest functionaries of Church and State, by whose side the attendant inhabitants of the district constituted a mere group of bystanders, who could take but a passive share in the special objects of deliberation.

There are thus to be distinguished two circles, the narrower being formed of notables, whom the King summons by name, and who are recognized from the signatures. On the spiritual side these signatures are

always those of the Archbishops and Bishops, a number of Abbots, occasionally a Deacon also, and other ecclesiastics of lower order (*ordo*), holding important positions as notaries or otherwise. On the temporal side are always comprised the Ealdormen, by the recording clerks capriciously designated as *duces*, *principes*, *comites*, *præsides*, and so forth; then the great landowners renowned in war, frequently invested with high ministerial functions, according to which they are wont to be diversely entitled *dapifer*, *pincerna*, *discifer*, *procurator aulæ*, *aulicus*, *palatinus*, and so on. With these are not unfrequently grouped members of the royal family, *regina*, *regis propinquus*, and the like. Then follow, as forming a subordinate division, and usually in large numbers, the Sheriffs summoned to the Council, and other Thanes filling offices of trust, and more summarily grouped as *ministri*, *milites*, etc.

The wider circle is constituted by the numerous retainers of Prelates and Thanes, the parties and witnesses to some judicial inquiry, as well as the lesser Thanes and freemen coming from the neighbourhood, who, according to the nature of the locality, and the time of holding the assembly, often appear in considerable numbers. But, being overshadowed by the assembled dignitaries of Church and State, by the great landowners and confidential advisers of the King, and, being rather casually present than by special summons, none of these could, as a rule, raise a claim to take part in the deliberations. As free members, however, of the National Council, and remembering the former participation of all freemen at the district assemblies, the "bystanders" would scarcely have

brookd being deprived of their right to greet with "acclamation" popular resolves, or even, at times, to signify their dissent. With reference to this often very numerous attendance, historians loudly proclaim such assemblies as assemblies of the people, *placita universi populi*, *placita omnium liberorum et hominum*, *assisa generalis*, and so forth, and it was in the very nature of things that, at serious and perilous conjunctures, much weight should be attached to the acclaiming of such "bystanders," on an occasion of the election or the coronation of a King. Even at the election of the Roman Emperor of the German nation, upon the right of election of the seven imperial electors being legally established, and in remembrance of very ancient traditions, recourse was had to the acclamation of the assembled people, after previous question was put to them, as to whether they accepted the new lord, and were willing to render him obedience. This acclamation thus seems intelligible enough at the so-called "election" of the King, even after the hereditary character of the kingly dignity had long been settled. At the accession of Canute and the settling of the Danish royal family on the throne, this "acclaiming" is mentioned as being of great significance, and it would doubtless have a corresponding significance especially in cases of doubtful or contested successions to the throne. If, as often happened in the petty states before their fusion in the Heptarchy, there arose any strong opposition of the warlike nobles against the King, or in case of assassination, or violent usurpation, or on the extinction of one dynasty and establishment of another, then the consciousness was quickened anew of an

elective right pertaining originally to all freemen, a sort of reserved right inherent in the whole people to enthrone its own supreme magistrate. From solitary revolutionary manifestations of this kind we are not, however, to infer the erroneous notion that the Witenagemotes had exercised a constitutional right of electing and deposing the sovereign, as has been of late set forth anew in the English constitutional history by historians of a certain tendency.

The strong personal influence making itself felt in all such cases, resulted at last in creating the powerful position and initiative attaching to the kingly office under normal conditions, wherever royalty was sufficiently developed. Hence in the flourishing period of the West Saxon kingdom the resolutions of the popular assembly scarcely ever appear otherwise than as acknowledgments of the proposals or resolutions of the King. What great personal qualities were, in such a position, capable of effecting for land and people alike is manifest, especially from the history of Alfred, the King of popular song, to whom a later age was inclined, in pious belief, to ascribe all that is great in the institutions and customs of the people.

The consciousness of the blessing of hereditary monarchy for the well-being of the people had, in those happy times, become so ingrained that, even under incapable successors, such as the so-called six "boy-kings," the right of hereditary kingship was firmly established. Owing to the decline of personal leadership, the initiative in public affairs reverted to tutelary representatives, at one time some great







ishing shifting of power, naturally due to the varying personal influence of the King and leading members of the Witenagemótes in times when everything depended on the glamour attaching to individual worth or prestige. While under Cnut the Crown was all-powerful even in the National Councils, it seemed to be completely overshadowed by the ascendency of the great lords under his earlier predecessor, Æthelred the Unready, and his later successor, Edward the Confessor. As in France and Germany, the monarchy seemed to be dissolved into a group of independent dukedoms and territorial lordships.

But during the closing years of the Anglo-Saxon epoch the evil became intensified by the unhappy combination of the two factors, regal incapacity, and disruption of the legal and moral cohesion of the nation.

The Royal House of England is now itself dismembered by alliance with the Danish family of Earl Godwin. Edward the Confessor, unwarlike and irresolute, is surrounded and swayed by French favourites, partly friends of his youth, partly ecclesiastics whom he preferred to bishoprics, alien to the land and to the national Church in all social respects. The valiant Danish Thanes are thus at last driven to open revolt crowned with the triumph of Godwin, and the kingdom is henceforth in the hands of the great lords.

The great lords were themselves divided into national and Church factions. The intrusion of the warrior Danish Thanes had severed the strong ties which had hitherto bound the Saxon nobles to the Crown. By their side stood an equally discordant

prelacy, interwoven with the family and landed interests of the nobles, at home studying how best to strengthen their power and privileges, abroad partly in allegiance with Rome, partly already in alliance with the Duke of Normandy, still hoping for further aggrandizement. These elements of discord affected in a less degree the old home of the Wessex dynasty. But through its originally mixed population the extensive territory of Mercia had become a region, on which in times of serious national danger no dependence could any longer be placed. In a still worse plight were the northern districts, where a confused blending of tribal groups had already induced ambitious representatives of the Crown to declare themselves independent.

Equally discordant, and for the most part deeply disorganized, appears the inner life of the shires. In Kent and a few of the Wessex shires there still survived an armed yeomanry in the enjoyment of its constitutional rights. But in the majority of the shires there already prevailed the system of territorial lordship with its enthralled peasantry and manorial retainers. The Danish wars had completed the wholesale ruin of the small freeholds, while the energy of free national life, the sense of independence and warlike spirit of the ceorl, went on declining from age to age. Even the flourishing times of the monarchy could but stave off without permanently arresting this process of dissolution.

No urban life had yet been developed, which might have lent fresh dignity and vigour to the old communal liberties when transferred to another sphere based on

new conditions of property. Nor had any new principle been devised for the better adjustment of the obligation to military service, so as to exempt the small holders from the ruinous incidence of this burden. Radical reforms, such as those attempted by Carlovingian legislation, seemed less called for in England, whose insular position tended to inspire a greater sense of security. The excessive growth of ecclesiastical landed property had also further disturbed and weakened the system of national defence, while the mild administration of the Cerdic dynasty, influenced by the spiritual and temporal lords, was ever averse from high-handed remedial measures. In times of emergency even Cnut's overbearing character preferred to uphold the throne with an exclusive body of three thousand mercenaries, the so-called "Húscarls," who could gain no firm standing in the then prevailing national systems of land-tenure or finance. In any case the decline of the military organization went on apace, and Cnut found it advisable even in this matter to make his peace with the Church, and allow the steady growth of landed estates to take its course. Hence the appearance even of this mighty ruler of men was as that of a bright meteor flashing across the firmament.

Thus the Witenagemótes of the eleventh century could but present a spectacle of internal dissolution. "Whenever," writes William of Malmesbury, "the Earls assembled in Council, one chose one thing, another another. They seldom agreed upon any good measure, deliberating rather on domestic treason than on the public needs." The true root of the evil is rightly pointed out in the recent description by

Stubbs:—"The coherence of the nation was still relatively strongest in the lowest grades. Families, localities, Hundreds, Shires, held together, while Ealdorman strove with Ealdorman, and the King remained in his isolated dignity. Kent, Devonshire, Northumberland, possessed their communal life, but England not. The Witenagémóte represented a wisdom that did not combine either the power or the will of the nation."

In this state of affairs Harold, the heroic successor of Edward, found himself, in the decisive struggle for the national existence of the kingdom, almost driven to rely solely upon the power of the old kingdom of Wessex, where State and Church, Thanes and people, still held together. When the great army of the Norman Duke had already landed on English soil, the levies of Mercia and most of the temporal lords held back from the fight, in treasonable neutrality. The decisive battle near Hastings (Senlac) was merely a struggle of the yeomanry from Wessex, with numerous followers and mercenaries, wherein the nation, together with the King, succumbed.\*

Sad though the picture of those last years appears, yet two striking features stand forth, which no change of time has availed to efface. The first is the upholding of the Teutonic judicial system, which still extended a sheltering arm to personal freedom. The judgments pronounced in the Communal Courts and by the legal experts, combined with the strange forms of evidence, might fail to protect the weak against the strong, but they remained a powerful bulwark against the arbitrariness.

\* A graphic account of the fatal battle occurs in Freeman's "Norman Conquest," vol. iii., pp. 450-457.

ness of the royal and manorial reeves. Even at the period of the incipient decline, the Anglo-Saxon judicial mode of procedure always conveys the impression of processes conducted on the principle of a fair trial. For this very reason the fundamental law of trial by one's peers (*judicium parium*) was tenaciously upheld even by the heavily-burdened Ceorl, as the point which still gave some value to the individual conception of liberty. For the maintenance of the peace, the social element existing in the "tithings" and in various voluntary associations (guilds), still retained some efficacy.

The second lasting heirloom was the development of family life and national character, through the national Church. Assuredly in no other country of Europe had the conversion to Christianity produced such far-reaching and lasting results. This fact was only apparently concealed by the subsequent attitude of the higher clergy, and by the infidelity of the Danish Thanes, in whom the new Christian principles of belief had not yet availed to prevail over the old spirit of Odin-worship. But so far as the Christian was permanently interwoven with the Anglo-Saxon element, there was revealed in the great and lowly alike a moral atmosphere of goodwill, of truthfulness, and of fidelity, which also found expression in the mild rule of the Anglo-Saxon landowners, in striking contrast with that of their grasping successors.

On such foundations it was doubtless possible to re-establish a powerful government by means of the royal authority. But what the moribund Cerdic dynasty was no longer able to effect was destined to be accomplished by a foreign conqueror.

## II.

# The Anglo-Norman "Court-Days" and Assemblies of Notables.\*

### TABLE OF KINGS.

WILLIAM I., 1066-1087.	HENRY II., 1154-1189.
WILLIAM II., 1087-1100.	RICHARD I., 1189-1199.
HENRY I., 1100-1135.	JOHN, 1199-1216.
STEPHEN, 1135-1154.	HENRY III., 1216-1272.

WITH this period State and Society enter into new relations. The Anglo-Saxon communal life seems suddenly broken up by the violent intrusion of a race, originally of Norse stock, but which on the soil of Normandy had adopted French speech and usages. William, Duke of Normandy, surrounded by a victorious army, is proclaimed King of England in a

\* The most important legal authorities are found in Schmidt, "Gesetze der Angelsachsen" (1858), pp. 321-357; the original documents of the so-called *leges Wilelmi* in Stubbs, "Select Charters," pp. 83-85. Political treaties and records of administration of the years 1066-1391 are given by Rymer, *Foedera* (1816-1830), and the publications of the Record Commission in the nineteenth century. The general history of this period: Lappenberg (continued by Pauli), vols. ii. and iii. The principal modern works on this subject, are those by Edward A. Freeman, "History of the Norman Conquest of England," vols. i. to vi., and W. Stubbs, "Constitutional History" (1874, vols. i., ii.).

tumultuous assembly, amid the "acclamations" of the Normans and the Saxons present, and is crowned by the Archbishop of York.

The old controversy as to whether William the Bastard \* conquered England, or by what other title he obtained possession of the land, was in unequivocal terms disposed of by the Conqueror himself. On the announcement of the death of Edward the Confessor, and the further intelligence that Edward had, by wish of the Thanes, appointed, as his successor, his brother-in-law, Harold, and further that the latter had been crowned King, Duke William sent envoys to Harold for the purpose of asserting his claims to the Crown of England. He refers to a deed of gift ("Grant") from Edward, and to the formal engagement Harold had entered into in 1065, while on a visit to Normandy, to the effect, that William should become Edward's successor, and eventually share the kingdom with Harold. Certain promises, indicating some such intention, seem to have been really extorted from the Duke's guest,

\* According to an account given by Sismondi, "Robert the Devil," Duke of Normandy, on occasion of a visit to the Count of Flanders, had taken a fancy to his daughter, and, as was wont in the Middle Ages, asked that he might visit the daughter of his host at night. In order to save the honour of the young countess, Harlot, the beautiful daughter of a furrier, was substituted, and found such favour with the Duke, that he not only forgave the deception, but kept the furrier's daughter as his favourite to the end of his days. William the Conqueror, fruit of this union, united, to a rare degree, the worst features of human nature with the loftiest qualities of a sovereign. "Nobody loved him, nobody relied on any good qualities of his. The seeming good in him was never really good, but somehow always mixed up with his own selfish interests" (Vaughan). But in his knowledge of human failings, and of the art of turning them unscrupulously to account, he was equalled by no contemporary sovereign.

Harold being afterwards craftily inveigled into swearing, upon a cunningly concealed relic, to keep the engagement thus entered into. Harold's accession to the throne was consequently treated as a treasonable proceeding, and an act of perjury, and, in each successive step of the transactions, but especially before the Papal See, the wily pretender kept up the semblance of a firm conviction in his own undoubted rights. In his own land he succeeded in inducing the greater part of his vassals, after some demur, to afford him a twofold war-levy, both in men and ships. A further invitation to arms was issued to the neighbouring lands, calling on knights and mercenaries to join the expedition, giving assurance of high pay, rich rewards, and English estates. In consequence thereof, numerous lords from Brittany, with a train of followers, as well as fighting men from Maine, Anjou, Ponthieu, and Boulogne, and the ever-restless Flemings, took part in the enterprise. Thus were brought together such a fleet as till then had never been seen, and an army estimated at 60,000 men. A landing was easily effected on St. Michael's Day, 1066, followed a fortnight later by the crushing defeat of the Anglo-Saxon forces after a stout resistance at Senlac near Hastings.

The maintenance of a personal right to the throne was certainly the only mode whereby William could secure the lasting submission of his new subjects, and at the same time obtain a firm standpoint against the arrogant claims of his followers. By obtaining the Papal blessing he had astutely out-manœuvred his competitor. Consequently it was not the Norman people



that had gained possession of the land, but Duke William, in his own person, as the heir presumptive and legitimate successor to King Edward, with the presumed assent of a National Council. The consequences of such mode of action were :—

**I.—A VAST CHANGE OF OWNERSHIP IN LAND, AND A NEW SHAPING OF THE RELATIONS OF OWNERSHIP.**

Decisive in this respect was the position assumed by William, as legitimate successor to Edward. While King Harold and the Saxons, who had paid him homage and fought by his side, were treated in the light of "rebels," there was discovered in the Anglo-Saxon laws a legal principle involving the most wholesale confiscation of property. Owing to the continued resistance in some districts, the whole nation was, by a legal fiction, assumed to take part in the rebellion entailing the forfeiture of their landed property, the right of proving their non-complicity being restricted to individual cases. The Angli, who kept aloof or were less compromised, were accordingly permitted by the King's favour to resume their lands on "Redemption," those thus favoured receiving a Royal "Breve," which thenceforth was regarded as a necessary and all-sufficing title of possession. For this the technical expression was *inbreviare*. According to the circumstances of each *inbreviatio*, it was granted upon moderate, high, or very high fines, the "Redemption" applying either to the whole or to part of the estate. According to the theory and language of the great Domesday-book, the "Redemption" wears the aspect rather of a gift from the King, in virtue of which the new possessor of the whole estate continues to the previous owner

a specified share in the land. At a subsequent period, jurists were able speciously to derive from such "Redemptions" the conception of a "loan," or "tenure," for all landed property.

In consequence of such principles, a wide-spread change of ownership resulted, as may be collected from Domesday-book, which will soon claim our attention.

About 600 persons, corporations, lords, spiritual and temporal, and crown vassals (*tenentes in capite*), were by the King immediately thus placed in "tenure." Among the lords temporal, some thirty or forty possessed large groups of estates, similar to the demesnes of the Saxon great Thanes, but widely scattered throughout the several counties. About 400 men, directly attached to the Duke's service, were endowed, in different proportions, with single or with several Knights' fiefs. Among the 150 lords spiritual, the estates of the Bishops and the greater Abbots resembled those of the lords temporal, who received the most extensive tenures; but most of the grants to ecclesiastics were also minor tenures.

The second category comprised 7,871 *subtenentes*, partly Normans, partly Saxon Thanes on their ancient holdings. For these latter the "Redemption" served as a recognition of ownership, with the new burdens of war-service attached.

The rest of the population retained their possessions, often precarious enough, and still further burdened with the new feudal system. The majority comprised 108,407 *villani*, or ceorls; 82,119 *bordarii* (agricultural servants and cottars); 25,156 *servi*, thralls,—and others

enjoying a somewhat larger share of freedom : 10,097 *liberi homines* ; 23,072 *sochemanni* ; 7,968 *burgenses*.\*

There had evidently, from the outset, existed an intention to hamper all the great owners with the cumbersome Knight's service of the Norman feudal system ; but, owing to the ill-regulated apportionment of the war-burden in Anglo-Saxon times, the needful groundwork was lacking. This explains how, at the first attempt to enforce it, on occasion of an impending invasion (1085), the King abandoned the purpose, levying instead a heavy contribution from every plough-land (*hydagium*), and hastily raising a force of mercenaries. In connection with these proceedings was developed the vast plan of framing a complete land-register, whereby, in case of all future levies, the number of the fighting men might be definitely fixed, and all other dues fully exacted. This land-register—Domesday-book—was completed 1086,† and on such

\* As in Domesday-book the landed possessions, at the close of the Anglo-Saxon period (*tempore R. Eduardi*), are also indicated, the change of ownership may be seen in the following comparative table :—

Tempore Edwardi.		Tempore Wilelmi.	
Great Landowners	1,599	} Crown Vassals	600
King's Thanes	326		
Milites	213		
<i>Tenentes et Subtenentes</i>	2,899	<i>Subtenentes</i>	7,871
<i>Ecclesiastici</i>	1,564	<i>Liberi homines</i>	10,097
<i>Sochemanni</i>	23,404	<i>Ecclesiastici</i>	994
<i>Burgenses</i>	17,105	<i>Sochemanni</i>	23,072
<i>Villani</i>	102,704	<i>Burgenses</i>	7,968
<i>Bordarii</i>	74,823	<i>Villani</i>	108,407
<i>Cottarii</i>	5,497	<i>Bordarii</i>	82,116
<i>Servi</i>	26,552	<i>Cottarii</i>	5,054
		<i>Servi</i>	25,156

† "Domesday-book" was officially printed in 1783, in two folio volumes ; to which were subsequently added four supplementary indexes and tables of contents, in two volumes, under the Record Commission (1816) ; and an explanatory introduction,

foundation the share of service each greater landowner had to bear was fixed by the Treasury, whereby the number of fully-equipped men each had to supply was determined. The *feuda militum* thus fixed do not represent knightly manors, with defined limits, but distinct portions of the profitable freehold. The knightly or military fief, as such, is not a manorial estate, nor a plough-land of definite dimensions, but all large actually occupied lands yielding a certain average income.

All subsequent relations of the English feudal law were developed on practical grounds, in accordance with the following general points of view. When the King granted investiture to one of his lieges, there existed, in the use of the traditional form, a reference to a traditionary legal relation in a twofold aspect. The person infeudated submitted himself to the feudal law, saying :—"I become your liege man," just as was customary in Normandy; even the Anglo-Saxon left in undisturbed possession could, in this respect, lay claim to no wider right than the *Francigena*. The infeudated property itself was naturally granted according to the measure of right enjoyed by the previous holder, consequently with all the burdens and services constituted by the relations of the Anglo-Saxon folk-land, laen-land, and with the conditions of transfer applying to the bók-land. Where both relations were not covered, the Crown endeavoured to carry into effect the conditions

by Sir H. Ellis, "Introduction to the Domesday-book," 1833. The five Northern Counties, as also London, Winchester, and some other cities, are wanting in Domesday-book. The number of registered plough-lands amounts to about 225,000, the number of men given is 283,242.

most favourable to itself. From the financial and legal standpoint new principles were thus evolved, which, through the interweaving of Norman and Saxon traditions, after some fluctuations ultimately established one uniform law. From these points of view we may reconstruct all the details of this feudal law, the heavy charges attending every change of possession ("reliefs"), as well as the principles of feudal wardship, marriage, and reversion or escheat.\* Thus was developed in the course of about three generations a newly-fashioned right of ownership, which regulated with tolerable uniformity the burdens attaching to property down to the humblest vassal, and which introduced into jurisprudence the fundamental principle, that every real estate is, directly or indirectly, bound to the King in fee. On the ground of such new conditions of ownership continues unaltered :—

II.—THE COUNTY AND DISTRICT ADMINISTRATION ON THE SAME  
OUTLINES AS IN ANGLO-SAXON TIMES.

The shire or county (*comitatus*) remains the chief

\* Till recent times it was traditionally supposed that William divided the land into 60,215 military fiefs. This assumption, made current by Selden, in a note to "Coke on Littleton," is derived from a most untrustworthy and obscure source, and cannot be reconciled with a number of other data, and has now been completely set aside by Freeman's "Norman Conquest." A code of Norman feudal law never was framed, nor was it ever possible to determine with any certainty the actual number of military fiefs. There never did exist a systematical sub-infeudation on a considerable scale. The probable number of fiefs entered in the records of the Treasury hardly reached 30,000. The artificially evolved feudal law of later times was founded on the financial practice of the Exchequer, and the legal dicta of the Royal commissaries on the basis of Norman feudal customs and Saxon common law.

territorial division for general administrative purposes, the Ealdorman, or Earl, however, becoming practically superseded under the new order of things. The few Earls of whom mention occurs, and who are often related to the royal family, survive only as the highest titled dignitaries. The Shire Reeve (Shir Geréfa), who is now alone actively employed, is henceforth nominated by the King, under the designation of *vice-comes*. He is mostly selected from among the Norman barons, as a temporary officer charged with the business of the Law Courts, the maintenance of order, the summoning to arms, and the execution of the King's writ. Financial considerations, everywhere paramount, require him to be placed directly under the Royal Treasury, where he is installed, sworn in, and subjected to disciplinary arrangements, capable of yearly reappointment, but also liable to dismissal at any time. While himself strictly subordinate to higher authority, he is regarded by all subject to his jurisdiction as a formidable provincial magistrate. As the King's representative in the Law Courts, he holds the ordinary County Court with the Thaness, now replaced by the Crown and inferior vassals, who still discharge certain legal functions in conjunction with other freeholders (*libere tenentes*). The scope of his jurisdiction is at the outset the same as formerly, questions connected with Crown fiefs being, however, reserved for the personal decision of the King.

Notwithstanding its lessened importance, the class of small freeholders stands firmly by this form of tribunal, participation in the local council being still

the practical test of the "*liber et legalis homo*." On the other hand, for slight offences the *vice-comes* was empowered by a new regulation to visit and hold Court in the Hundreds twice a year. This *turnus vice-comitis*, as it was called, thus constituted the lower Royal Civil and Criminal Court for the whole community (*court leet*), combined with an annual revision of the list of freemen (*visus francplegi*).

For the local administration, the system of Baronial Courts, according to Anglo-Saxon tradition, continued to be recognized. Through the feudal system the principle was now superadded that jurisdiction was recognized by each sub-tenant for his sub-infeudated estate, such jurisdiction being now also extended to minor free rights of ownership in respect of military service. A country seat, having jurisdiction over sub-vassals and free settlers, was termed, in Norman parlance, a "manor," and the Manorial-court itself a "court-baron." Therewith was continued the old jurisdiction over the retainers and peasants bound to the estate on laen-land, constituting a Domestic Court in the narrower sense of the term (*Customary Court*). On the other hand, the ancient criminal jurisdiction of the territorial Courts was not enlarged, but with new infeudations was withdrawn to the utmost, and made over to the *turnus vice-comitis*, from which new infeudations were again subsequently transferred to Town and Estate District Courts (private leets). On the Continent also all conditions of dependence continued to become more and more attached to analogous institutions. But the peculiarity of the Anglo-Norman feudal system consisted in its tendency

towards centralization, which the traditional Royal rights expand into :—

### III.—VIRTUALLY ABSOLUTE STATE PREROGATIVES

The *War prerogative* becomes in the first place enlarged through the duty of feudal service arising out of possession, according to the State registration, through the severity of the feudal military control, and the system of "felonies" and "fines." The right of declaring war or peace becomes wholly independent of any popular assent, in consequence of the personal Oath of Allegiance exacted from the vassals of the Crown and barons. All high military rank during service remains at the personal disposition of the King, whose revenues, paid troops, and strongholds are so numerous that these legal prerogatives are practically effective. The maxim of William I. that every sub-vassal gives his feudal-oath to the King, and that every oath of fidelity to a private feudal lord detracts from the homage due to the King, established under such conditions, complete uniformity in the organization of the military feudal system. Nor was the ancient obligation incumbent on the *liberi homines* to obey the general summons to war ever actually withdrawn. It was renewed by Henry II. at an Assize-of-arms (1181), and placed under the control of the *vice-comites*, thus serving in this twofold relation to still further strengthen the King's military prerogative.

His *judicial prerogative*, however, was certainly restricted by the solemn pledges given for the maintenance of the "Leges Eduardi." In the language of the time, by this expression was understood the *lex terræ*,



comprising the whole range of law, criminal and private, customary and real, of the native population. This led to the transference of the Anglo-Saxon judicial system in as slightly modified a state as possible. At the same time the difference between the traditional rights of Anglo-Saxons and Normans led to manifold conflicts, the decision of which was conditioned by the constitution of the Courts, which itself depended in great measure on the lord of the manor, and in the Shire Court on the *vice-comes*. The attitude of these judges was often partial, and generally regarded as such, owing to the divided interests of the two great national parties. A further development of legal principles by custom seems thereby to have been interrupted. Henceforth the necessary uniformity of judicature could be restored only through some higher tribunal than the Shire Court. Hence even under Henry I. mention already occurs of Royal Commissioners, who from the time of Henry II. become appointed at stated intervals. With a view to safeguarding the old methods of procedure, they were commissioned jointly with a number of lawyers attached to the Shire Courts. In reality, however, they gradually became the sole counsellors at law, bearers of special instructions from the Crown, and constituting a body of official jurisconsults, whose authoritative decisions were quietly accepted, thanks to their previous practice in the *curia regis*. The Shire Courts thus gradually lost the function of "declaring the law." On the other hand, the local institutions still exercised the office of determining the question of "fact," which however in those times was mainly decided by the processes of "challenge" and "ordeal." But already under Henry

II. this crude system of evidence began to be replaced by sworn commissions (*recognitiones juratae*), a reformed procedure, which, after passing through some intermediate phases, was extended to criminal proceedings in the form of grand and petty juries.

The *civil prerogative* (executive), intimately connected with the Criminal Courts, acquired, through the feudal system, and from practical necessity, an extension elsewhere almost unheard of in the Middle Ages. The traditional right, originating from the ancient prerogative of war, to issue injunctions of peace (police ordinances), was strengthened by the new feudal prerogative. The responsibility of the "tithings," through their *præpositi*, was rendered more stringent and strictly controlled by a yearly revision of the "frank-pledge" (*visus franc-plegii*). The ancient system of arrest enforced by the Hundred in case of theft was revived, with the addition of imprisonment and fine of forty-six marks for secret murder, and these penalties were continually extended, their efficacy being due to a regulated system of police. The feudal system introduced military discipline, to which the ruler gave effect, in lighter cases, by infliction of fines levied on movables (*emenda*). The value of the movables thus forfeited was subsequently "redeemed" by grace and favour of the feudal lord (*misericordia, mercy*), generally for a smaller amount, and in this form was known as "*amerciamentum*." But the military power of the King being applicable directly to sub-vassals, and by analogy to all smaller occupants, this disciplinary right extended from the highest feudal lord down to the humblest villain, and in an indefinite number of cases to the residents of entire Shires, Hundreds,

and Tithings. Any one questioning the charge was so easily convicted by the court presided over by the King's commissioner, that the accused party usually preferred acknowledging the offence, and accepting the *misericordia* so as to escape with a slighter penalty. This procedure was completed by the feudal system of distress (*districtio*), and the sequestration of the fief. This right of "amerciament" became the special instrument of the royal executive. Under such conditions it became possible to substitute this regal prerogative for the older decisions of the *consilia optimatum*, and thus establish a system of absolute government by means of ordinances combined with the executive functions.\*

In addition to the traditional rights, the royal pre-

\* The system of civil fines (amerciaments), owing to the little dependence to be placed on the decisions of the courts, became at this period a matter of unlimited arbitrary dealing on the part of the civil authorities. They serve, in innumerable instances, in the carrying out of the criminal law, under the general heading of breach of the "King's peace," of disobedience to the King's commands (*contemptus brevium regis*) for the punishment of every act of disobedience, and every irregularity in judicial proceedings, any infringement of the rights of the King, and overstepping of manorial jurisdiction, etc. It is a strange contrast, when compared with the condition of the Continent, to meet in England with temporal lords, Prelates, the City of London, and entire counties under penalties for five hundred marks, a hundred pounds silver, etc., amongst the Treasury accounts, by reason of some overstepping of authority or irregularity; and even entire counties and boroughs placed under Royal sequestration owing to some failure in duty of their bailiffs, or to the non-execution of Royal mandates, and so forth. The power of "amerciaments" became the special instrument of the Royal right of ordinance. *Vide* on this important point, Gneist, "Engl. Verfassungsgeschichte," § 11. The extraordinary Norman mode of dealing, according to which disobedience against the brevia of the duke was treated as treason (Brunner, "Schwurgerichte," pp 66-77), was not practicable in England, where the *leges Eduardi* were valid, and because of the solemn assurance of the Charta of Henry I.

*rogative in financial matters* comprised, consequent on the feudal system, the heavy fines on every change of ownership ; the "aids" traditionally afforded on occasion of dignities granted, or in cases of pressing need ; the revenues resulting during wardship, with manifold extensions consequent on fiscal "devices ;" as well as innumerable civil penalties and fines on account of royal grants and favours.\* From the fines levied on vassals who were bound to military service, to the *auxilia* in cases of pressing need, it was inferentially expected as a duty, on the part of vassals not so bound, to pay *auxilia* or *tallagia*, according to an estimate made, at discretion. For the administration of the finance thus enhanced, the Exchequer was established as a permanent institution, combined with a body of clerks, a strict system of control over the accounts, and a stern disciplinary power over all the King's bailiffs. The combination of the Exchequer, Courts of Law, and police administration in the persons of the County-bailiffs, brought all the King's officials

\* On a level with the arbitrary dealing on the part of the administration, by means of the civil penalties, was the application of the endless fines which the Treasury devised with veritable ingenuity. Not only were fines payable for the granting of all kinds of liberties and franchises, but also for the renewal of the same, for their confirmation in case of dispute, for instance, for permission to propose to the Crown the nomination of a Sheriff or Mayor, or for permission to refuse any particular person. The boroughs in this wise purchased the main groundwork of their self-government. Endless were the fines in legal proceedings for every act of Royal jurisdiction, and for every abatement in the suit ; fines for a favourable sentence, wherein the parties outbid one another, fines for merciful treatment, for the softening of the punishments, and for the detention in prison, fines for the granting of offices, guilds, and right of following a trade, etc. *Vide* "Engl. Verf. Gesch.," § 12.

into permanent dependence on this general controlling power of the Exchequer. The Crown revenues thus gained in extent and expansive power, rendering them, from a financial point of view, independent of all classes.\*

Lastly, the *royal prerogative* over the Church, comprised in the first place the traditional right of assent to clerical provisions, and to an active share in the appointment of Prelates. Herewith is found combined the duty of the ecclesiastical feudal estate to equip bodies of men for war according to the capitation of the fief, as well as payments of "aids," and, later on, the so-called "scutage." On the other hand, to the Papal See important concessions were made, by the adoption of the Roman Liturgy and Ritual. The rich endowment of the Church was not only maintained, but extended by many new offerings, and by the foundation of monasteries. Lastly, ecclesiastical jurisdiction over clerics, and in regard to matters ecclesiastical, was recognized in all its traditional extent, and was now severed from the temporal jurisdiction. It is significative of the legislative power possessed by the Crown at this period that this step was taken, towards the close of the Conqueror's reign, by means of a circular rescript

\* The official guide to the administration of the Exchequer, "*Dialogus de Scaccario*," composed by a Treasury official, Ricardus, filius Nigellii, subsequently Bishop of London (1178), affords proof of the early development of the scheme of administration, and is also a noteworthy document, as regards an official's view of the functions of the State, such as we should elsewhere look for in vain during the mediæval period. The optimism displayed by the author, who in all existing institutions sees only the wisdom and benevolence of the ruler, is very characteristic, and is here found combined with a large measure of devotedness, in which may be recognized the grand-nephew of Roger of Salisbury, the renowned minister of Henry I.

addressed to the *vice-comites* ("Charters," p. 85), but with the assurance that it had been procured : *communi consilio, et consilio episcoporum, baronum*, etc.

These Royal prerogatives thus developed in every branch of the administration resulted in a concentration of power in—

IV.—THE CURIA REGIS AS THE CENTRE OF SUPREME AUTHORITY  
DURING THIS PERIOD.

For such centralization the Norman feudal style introduced this expression, *Curia Regis*, which, corresponding with the attitude of the Crown, may mean according to its various connections :—

The *Curia* in the sense of Norman "Court-Days."

The *Curia* in the sense of King's Court.

The *Curia* in the sense of the King's Government.

(1) *Periodical "Court-Days"* were held on the three great Christian festivals, since the time of William the Conqueror, in substitution of the Anglo-Saxon National Councils, but with an entirely altered character, when the last Anglo-Saxons were thrust from high office and from episcopal sees, down to the close of the Conqueror's reign. With the actual system of Crown-vassalship, organized on a military footing, the Norman kings ruled the land by means of ordinances and letters of grace, leaving to the *barones* no influence except through offices and commissions held by them at the royal pleasure. In fact, no laws dating from the first century of this period are extant, which were framed with the free deliberation of the "estates." The so-called laws of William I. are simply proclamations, charters, and official notifications, as sufficiently indicated by the style : "The King wills, orders, commands." Under

William II. no such ordinances are to be met with. Henry I. no doubt begins his reign with a charter promising great things, the gist of which lies in the words :—"I restore you the laws of my father, otherwise the laws of Edward, with such alterations as my father has made, with the consent of the 'Barons.'" But in the next following generations only single ordinances of the King are met with. The assumption of a legislative assembly during the first century of the Norman period is based upon an erroneous antedating of documents. But a wider survey of the new relation prevailing between State and Society is required to explain this phenomenon.

(2) *A Curia Regis*, in the character of a constitutional State tribunal, would have necessarily been bound up with a parliament, had such existed, in the sense of the Anglo-Saxon Witenagemótes. The King was certainly obliged to guarantee to his Crown vassals a *judicium parium*. But in this sense all the six hundred Crown vassals were equal before the law, and found their ordinary legal standing before the Royal *vice-comes*, in the county-court. There existed only a right of reservation to bring such cases before the *curia*; in other words, the King could, in important cases, name from the great body of the *tenentes in capite* a special commission to declare the law. We find, in fact, the royal jurisdiction exercised only under the form of commissions, but even then only in reference to matters concerning the most powerful and highly-favoured Crown vassals, while ordinary cases were tried before the *vice-comes* and the Shire courts. In this combination, we may understand how, in England,

the King's jurisdiction was able to extend itself beyond all the limits of the mediæval constitution ; how even a direct exercise of justice by rescript could have arisen, and further, how this very personal character of the King's Court could be constitutionally maintained for centuries as a Court of Law, "*ubicunque fuerimus in Anglia.*"

(3) Lastly, a *Curia Regis*, in the sense of a supreme department of State, might, perhaps, have developed out of a permanent feudal court, had any such existed in England. But as the "Court-Days" of the King were mere pageants, and as the royal jurisdiction was exercised by commissions, every element was lacking for a royal State Council, which, according to the administrative system of the Middle Ages, could not easily have existence. In the first century of the Norman period mention occurs only of a number of high officials, who stood in no corporate relation to each other, either as regards time or identity of functions. But the important offices bear altogether so much the character of dignities subject to revocation, while on the other hand the few hereditary offices discharge such unimportant duties, that a departmental organization of a standing character could in no wise be formed from them.

Out of the relations thus constituted of ownership, of State and County organization, there was further developed the—

#### V.—FORMATION OF ESTATES,

so indispensable to the right understanding of the legislative authority of the period.

As distinguished from the Continent, the State power



in England was strong enough to keep the ecclesiastical and temporal holders of office, the personal right to title, and hereditary right of possession, within their definite limits, thereby establishing the nobility and gentry on the footing of a privileged class as distinguished from a hereditary right, in the following degrees :—

*The dominant class of great Crown vassals* at the original partitioning after the Conquest, comprised those barons, especially, who already on the Continent possessed the position of counts or seigneurs, with estates that amounted to from 40 to 800 manors. Considering the relatively small proportions of English Knights' fiefs, and the progressive diminution of combined estates through sub-tenancy, it may be inferred that these were, from the outset, smaller than the dukedoms and earldoms of the Continent. Still more significant was the disjointed position of the ownership, arising from the fact of their estates being scattered in different and widely-distant counties. The landlords were thus unable to consolidate themselves, as regards either time or place, since through the stringent law of "lapse" (from want of a feudal heir, or through forfeiture), the same estate often reverted to the Crown more than once in the course of a century. The peculiarity of such a development is founded on a difference of principle, inasmuch as the position of owner in England was not based on the French system of seniority (the transfer of the duty to render military service from the small to the great ownership), but on the civil protection of the Hláford; and on the fact that the Crown permitted no extensions of the manorial, civil, and criminal jurisdictions, or any

privileged position before a Court of Peers, or any exemption from military service. It was thus based on a difference in the later development. Since Henry I., the great Bishop, Roger of Salisbury, is in some measure to be regarded as the originator of a new official nobility, whose prominent members not only thrust themselves into the episcopal sees, but also, through grants of estates and family alliance, into the higher nobility. Such, for instance, were the Bassets, the Clintons, Trussebuts, and others. Owing to unsuccessful attempts at revolt, the great nobles of the conquering host had already at the beginning of the twelfth century been forcibly dispossessed of their original estates. Under Henry II., the official nobility of recent growth appears to have already comprised a majority of the great lords, whose descendants took the lead among the Barons at the time of Magna Charta. Hence it was that in England the striving of the ruling class for a secure position took the direction rather towards participation in the highest Council of the Crown than towards the foundation of independent lordships. Such participation could be confined only to the eldest son. In like manner the heavy burden of military service and of taxations, led to a narrowing of the right of precedence to the firstborn, and thereby laid the foundation of the hereditary peerage, which arose in later times.

The second class of the population comprised the *smaller Crown vassals*, in their gradual fusion with the *sub-vassals*. The smaller Crown vassals, as thus defined, were distinguished from the great vassals not by the tenure, but by the extent of their possessions.

They also held their fiefs directly from the King, and were qualified, as rightful members of the *Curia Regis*, to sit in judgment on any Crown vassal, whenever summoned for the purpose. Many found in influential offices of dignity a position corresponding, even outwardly, with that of the great vassals.

The large number of *sub-tenentes* (7,871) in Domesday-book were, on the other hand, mainly Saxon Thanes and "free" retainers, amongst whom a formal sub-infeudation appears to have been but slowly developed. Sub-infeudation being now the only admissible form of transfer for a fief, there were numerous cases where Crown vassals became at the same time sub-vassals in some newly-acquired estate. Even the holders of the largest fief and prelates themselves did not disdain becoming sub-tenants to other lords. The relations of ownership became thereby, especially after the Crusades, so involved, that the idea of a subordinate position arising out of sub-tenure necessarily lost much of its force. The formation of an exclusive class of knights had, meanwhile, rendered the knightly dignity a common bond of union for all vassals bound to military service. All priority in rank of the smaller Crown vassals over the sub-vassals even became ever more doubtful, the more fresh purchasers acquired possession of the small Crown fiefs with the consent of the King. A comparison with the Continent shows, that the decisive point in this regard lay in the fact of the transference and partitioning of the military fiefs. In England the inalienability of the fief could not be practically upheld, because the feudal bond had been extended over the

entire ownership of the land. The transference was further developed by reason of the fiscal principles held by the Exchequer, to which every purchaser capable of paying was equally acceptable ; and further, by the facility of obtaining by a fee the King's consent to every possible kind of transaction. The time of the Crusades especially gave rise to manifold and comprehensive transfers, mortgages, and parcellings. At the close of the period the two classes thus became moulded into a single class of knights ; and already, at the beginning of the next epoch, the statute *quia emptores* enjoined that, on every alienation of a fief, the new possessor should become a direct vassal of the Crown.

The majority of the remaining free occupants and predial holders seemed, from the standpoint of the Norman nobles, to be merely "taillable," a kind of adjunct to the soil. Owing to the organization of the local jurisdiction, the ceorls, or villani, became still further degraded, taking in relation to the landowner a somewhat precarious position, without any safe-guarded right of possession. In respect of this lowest social grade the Crown abstained from interfering with the manorial rights, such as had also on the Continent created a servile peasantry. The insolence of the feudal classes bound to military service had collectively grouped together the lowest holders, the Court peasants, the lackland and bondmen, under the opprobrious designation of "villains." Those somewhat better situated are, on the other hand, inscribed in Domesday-book under the name of "*liberi homines*," "*sochemanni*," and "*burgenses*." Many amongst these

had been ancient allodial owners, who were now, however, more and more subjected to the burdens of the feudal system, according as the deduction became more evident that even this ownership could be acquired only by redemption, that the small owner had to bear the burdens of vassalage, the Saxon the burdens of the Norman. For many generations the arrogance of the military vassals must have weighed heavily enough on this third class. But what exercised most influence on future progress, was the fact that during these centuries the royal power prevented the rise of any hereditary or permanently ruling class, so that the advancement of every class to the higher grades of Society remained open alike to all. Important for the further development was also the circumstance that, in connection with the fiscal system of the public administration, the principle of exemption from menial service and payment in kind had been introduced since the beginning of the thirteenth century.

From all the relations as here set forth we arrive at the now sufficiently intelligible result :—

**VI.—THE TRANSFORMATION OF THE ANCIENT WITENAGEMÔTES  
INTO THE NORMAN "COURT-DAYS,"**

as merely consultative assemblies of notables, combined with the disappearance of all previously existing conditions on which the power of the Anglo-Saxon Witenagemôte formerly depended. The nullity of all parliamentary institutions without that coherence planted by State and Church in social life was made surprisingly evident during this period.

Such coherence still doubtless pervaded the Anglo-

Saxon population from the lowest to the highest, in Shire, Hundred, and Tithing alike. But these elements lacked a rallying point and leadership after the great lords and prelates of Anglo-Saxon stock had been more and more thrust aside from the King's surroundings. Nor was there a capable pretender to the throne at that time forthcoming from the ancient national dynasty, so that the desperate revolts of the Anglian population in the north all ended in failure. The crafty Conqueror knew well how to deal with such isolated revolts of the people, and from that time forth the ruling dynasty found a reliable support in the Anglo-Saxon element against the rebellious Norman lords, as against a common enemy. By his marriage with the heiress of the ancient Royal House, Henry I. was able to turn this support to lasting account.

The Norman elements also were, from the outset, deficient in such coherence. It was not the migration of a whole people that had achieved the Conquest, but a loose throng of nobles thirsting for land, of followers and mercenaries eager for plunder, many of whom soon withdrew to their homes on the Continent. The great nobles who remained with their retainers spread rapidly over the newly-gained land, while in the general confusion armed freebooters took possession of certain estates on their own account. The numerous "*invasiones*" noted in Domesday-book have reference to such forcible possession, without "*breve*" from the King. The sentiment of allegiance appears to have been but slowly developed, even among the medley of races that had settled in France itself, where the history of Normandy and the southern provinces

presents rather the spectacle of a shifting struggle constantly going on, with numerous revolts against the feudal lords, treason amongst those who were next-of-kin, and, now and again, desperate uprisings of the down-trodden peasants. Similar experiences were encountered by the new dynasty on English soil. Already in the year 1074 the great lords had forfeited their vast estates, in consequence of an unsuccessful rebellion, while, after repeated partial revolts, the general uprising of 1073-4 was followed by the result that none of the great barons found themselves in undiminished possession of their possessions, as originally acquired at the Conquest.

This deficiency of coherence was most sensibly felt between the lords and their followers from the Continent on the one hand, and the native population on the other ; or, to employ the language of the records, between the *Francigenæ* and *Angli*. According to the proclamations of William and his successors, both races were to possess equal rights, and this "equality," as a principle of government, was always adhered to. But, in social intercourse, the *Francigenæ* considered themselves, for a long period, as the conquering and ruling race, and in all the relations of ownership they had, in fact, become the dominant class after the last Saxons had been extruded from the great fiefs and the high offices of the Church. Amongst the lower vassals, the Norman troopers and the Anglo-Danish Thane remained about on a level. But the Thane on his ancient patrimony must have submitted with the greatest reluctance to the grasping *Francigenæ* ; and still more hated by the population must have been

the foreign petty nobility, which began to spring up from among the followers of the *Francigenæ*—a riff-raff of troopers and peasants, who had now become landowners on English soil: "uncouth upstarts, half-crazed through their sudden elevation, themselves wondering how they had reached a height of prosperity, and thinking they might do anything they liked" (Ordericus Vit., II., cap. 8). Of any bond of mutual loyalty within such a class of vassals there could obviously be no question during the period following the Conquest. In much the same position stood the ecclesiastical section of the community after the Saxon had been ousted by the foreign prelates, who, by addressing clergy and people in an unknown tongue, contributed their share towards the general corruption of the national speech.

This internal dissolution of all moral bonds deprived the great vassals of their hold on their inferiors. The nobles summoned to Court were doubtless owners of nearly the same landed estates as in Anglo-Saxon times. The wealthiest and most sumptuous in Christendom was also this Court itself, which was attended from time to time by numerous and brilliant cavalcades of Norman Lords and Prelates, followed by their sub-vassals and retainers. But these Lords and Prelates lacked what conferred political power on the French and German nobles—a firm hold on their sub-vassals and tenants. At first also the higher clergy lacked even that bond of sympathy with the lower clergy and people, which was not restored till later times.

The policy of the first three Kings of the Norman dynasty corresponded with this state of things. They



had to be prepared to meet attempts at resistance on the part of the new order of great vassals, a want of discipline being inherent in all feudal military systems, and even on French soil they had already had sinister experience of the fealty of their vassals. Hence for the maintenance of their authority they put their trust at all times in impregnable strongholds, numerous mercenaries, and the largest revenues they could raise, thus aiming, as during the later *ancien régime* in France, to make up for the lack of political power by the splendour of their surroundings. Hence from the first the Conqueror affected a marked love of outward pomp. "Thrice in the year he wore his crown, whenever he was in England; he wore it at Easter-tide, in Winchester; at Whitsuntide, in Westminster; at Christmas, in Gloucester. And then were present all the great nobles of the whole of England, Archbishops and Bishops, Abbots and Counts, Thanes and Knights." This statement of the Saxon Chronicle, diversely reiterated by contemporaries, forms the central point of what is known about the *Curia Regis* under the first reigns. At the same time it is recorded that even in Normandy the Dukes already held triennial Courts at Easter, Whitsuntide, and Christmas, combining with them fiscal and judicial business. Hence in England also such assemblies were called the "Customary Court Days," *curia de more*. The summons to Court was addressed to nearly the same Prelates, Counts, Court functionaries and lords, as to the Anglo-Saxon Witenagemotes. What was wanting, however, to such Court Days, was a real control over affairs of State. "The Royal order," says William of Malmesbury, "summoned

to the *curia de more* all the nobles, so that the ambassadors of foreign nations might wonder at the splendour of these assembled throngs, and the pomp of these festivals." So far as names and forms are concerned, the most recent describers of this period might no doubt be justified in regarding these court days as the substitutes and successors to the Witenagemótes; in fact, no express alteration of the State structure had been accomplished. Both sections of the population alike recognized from the earliest times only one ruler, surrounded by a dignified *consilium optimatum*. But the preliminary conditions which gave weight to the voice of these great nobles, and the great events which had transformed them into deliberative assemblies, with determining voice, were entirely changed in all three spheres wherein the decisions of the Anglo-Saxon National Councils had a different significance—that is, in the legislative, administrative, and ecclesiastical departments.

As regards the *laws bearing on jurisdiction*, the Norman Kings were made aware that not by mere ordinance could they alter, or set aside, the national maxims of law. In the *legislative department* the Norman Kings could not certainly set themselves above the national legal maxim, that the *lex terræ* could not be altered by the mere fiat of the sovereign. Charlemagne himself had not ventured so far in the face of his vanquished Teutonic tribes. But even the carrying-out of that principle became practically impossible from the moment that two distinct national elements, with different laws and procedures, stood side by side in the enjoyment of equal rights. For the Norman Crown vassals, the

common law previously existing in England was not "their" law, while for the Anglo-Saxon Thane, the surroundings of the Norman King in no way represented "their" National Council. The two nations laid claim to a continuance of their own native law ; but from the intermingling of the two sections of the population, the position of the Crown, in the character of an umpire court, seemed as inevitable as it was indispensable. A decision by majority of votes had from the outset been wholly foreign to both assemblies, and from the nature of the case had now become inadmissible. Respecting the assurance that to the Anglo-Saxons their ancient law, the so-called *leges Eduardi*, would be maintained, the King might doubtless take counsel with his Norman Barons ; but the lawful successor of Edward could not make that ratification dependent on their concurrence. The same position was repeated in the numerous further conflicts in which the King doubtless took counsel now with one, now with the other section of the nation. The decision, however, had to depend on the King, and this position necessarily lasted until a substantial blending of the two national laws was effected. Under such circumstances the legislative were silently transformed to mere consultative bodies. But in these transitions towards absolutism the old forms may often be retained for hundreds of years, as is best seen in the history of Rome, and of the *ancien régime* in France. And this was precisely the case with the Anglo-Norman period. The national legal assumption, that for the changing of the common law a co-operation of the *meliores terræ* was needed, was set aside by no distinct constitutional measure. But it remained with the King to decide for

himself as to what body of advisers he would consult. No one had the power to determine the selection of these *optimates*, no one had the right to decide whether or how the lords were to be consulted, or how far their counsels should be followed. The documents bearing upon these deliberations were kept amongst the King's archives, and it was not for several generations that, under the pressure of more powerful "estates," these records were drawn up in set form and duly registered, so as to secure their authenticity. While Anglo-Saxon times have left us a large number of decisions of Witenagemotes, with the carefully-appended signatures of the principal parties, the only extant document recorded with like care in Norman times, is the proclamation issued at the beginning of Stephen's reign, precisely because the "estates" still lacked a constitutional right to control the legislation. Thus is explained the occasional occurrence at this time of the formula "*consensu baronum meorum*," which crops up whenever there is any question of fundamental changes in the inherited common law. The Charter of William I., extant only in a mutilated form, wherein the King confirms and modifies the laws of Edward the Confessor, probably contained the same formula. At any rate, in the subsequent Charter of Henry I. it is distinctly stated that those additions were made by his father with the consent of the Barons, "*consensu baronum*." An essential alteration in the common law was certainly also involved in the ordinance of William I., separating the spiritual and temporal jurisdiction; hence the special introduction of the words that it was done: *communi concilio et consilio episcoporum et omnium principum regni*. The formal

character of the clause is sufficiently evident in both of these leading events. No ordinances with such clauses are at all met with in the reign of William II., while the solemn charters issued at the accession of Henry I., Stephen, and Henry II., mention a consent of the *optimates*, for the obvious reason that in these cases there was question of a usurped and contested succession; and even here the formula remains a mere spontaneous or voluntary assurance. The first approach towards a seriously intended assent occurs under Henry II. in the assembly of notables, at which the Assizes of Clarendon and of Northampton were resolved upon. But these indications also again disappear, and under Richard I. and John nothing occurs except revocable charters and orders.

In reciprocal relation to this inner dissolution of the legislative assemblies stood the severance of that regular connection of the judicial proceedings with law-giving, which was customary in the Anglo-Saxon Witenagemotes. The right reserved to the King of appointing a *judicium parium* for Crown vassals now took the form of a commission nominated by the King, or which *might be* nominated at the King's Court, or on occasion of court days, as no doubt sometimes happened. But in the very *causes célèbres* mentioned by historians facts and circumstances of a complicated nature were involved, which had to be determined on the spot. Hence the King enjoins the holding of a Court in the respective Shire, nominates a Prelate, or a great vassal, as his representative (*justiciar*), in conjunction with a fitting number of Crown vassals, for the discharge of the

"finding," and the co-operation of the "Men of the Shire" to decide upon the facts of the case.\*

From the outset the second branch was of an entirely different character. The participation of the National Council in what is now called "*the administrative measures*," and in the most important State proceedings, had been throughout of a relative kind, dependent on the times and the conditions of power. Owing to the expansion of the kingly power, the urgent motive for any such participation had now been removed.

In the *military department*, the personal summons of the King had taken the place of the decisions of the National Councils on questions of war and peace. The feudal levy was no general call to arms, but a body of men summoned by the feudal lord. The vassals rendered service, *intra et extra regnum*, on personal summons from the feudal lord, under penalty of losing their vassalship, or of incurring heavy fines. Only a century and a half later, after Normandy was permanently severed from England, could the question again rise as to whether the feudal militia was bound to serve beyond seas.

As regards the province of law, the Anglo-Saxon Kings had already exercised a right of issuing "ordinances," so far as the administration of justice was concerned, though not where there was question of

\* The researches of the Lords' Committee possess the rare quality of critical investigation of original records, combined with due acquaintance with just conceptions of State Law. Nevertheless recent historians and essayists still harp upon the notion of a distinct class of Crown vassals vested with legislative power.

any fundamental change in the *jus terra*. The Norman Kings, in their character of supreme arbitrators, could recognize no such distinction. Hence a number of most important rescripts, relating to criminal and civil jurisdiction, were issued at this time, under the shape of simple ordinances, orders to Royal councillors, and official instructions to the itinerant justices, and to the *vice-comites*.

In the executive department connected with the maintenance of public order the Anglo-Saxon Kings had already been accustomed to issue special police regulations, for which they sought the assent of the Witan merely with a view to their more ready execution. The Norman Kings kept so tight a hand over their *vice-comites*, geréfas, and itinerant justices, that no such ratification was needed. The system of the Anglo-Saxon "pledges" (surety of the landlord for the tenant, and of the district civil officers for the villains) was, therefore, enforced with unmitigated rigour by means of "fines." The further exaction of a murder-penalty, amounting to forty-six marks, for every murdered Norman, was an innovation against which the Normans had certainly nothing to object, while the Anglo-Saxons were unable to object at all. The periodical holding of general Police-courts by the Sheriffs (Sheriffs' tourn), and the periodical revising of the residents' list (view of Frank-pledge) were also grounded on Royal ordinances and official regulations. In the same way the extension of the criminal jurisdiction by means of the so-called *placita coronæ* was derived directly from the prerogative of the King, as "*conservator pacis*."

Lastly, in the province of finance, the King no more needed the assent of the Normans in respect of the ancient revenues of the Anglo-Saxon Kings, than he did that of the Anglo-Saxons, in reference to the new feudal revenues. The "Dane-gelt," which had been introduced in the last century of Anglo-Saxon times in cases of emergency, was still occasionally levied in times of real pressure, according to the measure of plough-land, yet with numerous grounds of exemption, in consequence of which it seemed unsuitable for a normal system of assessment. But the main point was that the new revenue from the feudal organization flowed in abundantly, and that, from the prevailing notion of the land being held under the Crown, there was further derived the principle that even those persons otherwise exempt from scutage were bound to contribute "aids" (*tallagia, auxilia*). For generations to come the ordinary needs of the Crown were thus amply provided for. Only a century later, when vassals liable to service in war were subjected to the so-called scutage-money (*scutagia*) in lieu of feudal service, the constitutional question arose as to whether the King might, by personal ordinances, change the legally established feudal relations, whereby the dawning of a right of taxation first made its appearance.

If in this sphere there was occasionally or incidentally any question of a co-operation and assent on the part of the Prelates and great Lords, and sometimes even of other classes, such were purely exceptional cases, in regard to which even in Anglo-Saxon times great weight was already attached to the "acclamation" of the "bystanders," as, for instance, on a coronation



or disputed accession to the Throne. But it so happened that during the first century of the Norman period all cases of succession to the Throne were irregular and open to dispute. Hence it was that William Rufus, Henry I., and Stephen took care to have their more than doubtful title to the Crown in all haste solemnly confirmed by their adherents among the prelates and vassals, and acknowledged with the public acclamation of all present. They, moreover, caused these proceedings to be recorded as acts of State, transacted "with the consent of the assembled people" (*consensu omnium episcoporum, baronum et universi populi*), as had been customary in Anglo-Saxon times, in virtue of the already mentioned popular right tacitly reserved for cases of emergency. But from all this no inference can be drawn as to the existence of an elective monarchy in Norman any more than in earlier times.\*

Lastly, the participation of the National Councils in ecclesiastical legislation assumed a modified character owing to the "separation of Church and State," which now began to be accomplished. The Conqueror had every inducement to meet this natural endeavour on the part of the Church to secure its own governance. For after all the sanction of the Pope still remained the only incontestable title to the Crown, while the lower clergy was the class who largely influenced the

\* The very vague and arbitrary designation chroniclers assign to assemblies of the most diverse character (*concilia, conventus*), the statement that the King, on the occasion of such an assembly *edicta proposuit* (1107), or that he, on another occasion, *magistratus arcessivit*, may just as well be understood as referring to ordinary as to extraordinary "Court-Days," or to the summoning of the Sheriffs in the Exchequer, and proves nothing whatever as to the existence of a Parliament with legislative functions.

obedience or resistance of the masses. Hence such concessions were at once made by the Conqueror as, according to Anglo-Saxon relations, could be made without consent of the *optimates*. England accepted the Roman liturgy, and conformed to the ritual observances of the Roman See. The lavish endowment of the Church with estates and tithes was not only maintained, but extended by further gifts and numerous monastic foundations. But the separate administration to which the spiritual order now aspired, necessarily involved a total withdrawal of the ecclesiastical from the temporal jurisdiction. The hitherto established co-operation of bishops and ealdormen in legal tribunals common alike to clerics and laymen, was opposed not only to the spirit of Roman Church discipline, but henceforth also to the interests of the secular order as well. Since the Conquest, the Earls had been removed from the conduct of the County Courts, so that a co-operation of the Bishop with the Shir-geréfa could no longer prove acceptable to either party. Hence the separation, which under such circumstances could not fail to be popular, was proclaimed, ostensibly *consensu optimatum*, by the above-mentioned circular rescript of William I. But a far-reaching consequence of these changes was, that in its legal decisions the spiritual order appealed, not to the common law, but directly to ecclesiastical right (*leges episcopales*), that is to say, to the canon law, the decrees of Councils and Papal decretals. There thus arose a comprehensive civil and criminal jurisdiction independent of the State, as well as a superior control over the whole spiritual order, which could not fail to bring about a conflict of

authority with the temporal power. Under Henry I., as later on by the Calixtine concordat in Germany, the vexed question of episcopal investiture was settled by the compromise that the Pope imparted spiritual power by ring and staff, the King temporal power by infeudation with the sceptre. Although right in theory, this compromise had very soon the effect in Germany, that the curia, with its harmonious and expeditious administrative system, took precedence of the cumbrous and disunited State authority, thus usurping a decisive influence in all nominations.

If this result did not at once follow in England, the determining cause lay in the fact that the Anglo-Norman Kings enjoyed all those administrative powers which the German emperors did not possess. The Conquest had given William I. a feudal supremacy, in the fullest degree, over the greater ecclesiastical possessions. No doubt the degrading fiction of a "Redemption" could not be extended to Church property, and the Church had to be exempted from a presumed participation in "Rebellion," and from a consequent forfeiture of ownership. But the powerful position of the Conqueror in respect of his Norman chaplains, whom he, by grace and favour, had named his Prelates, was, with few exceptions, sufficient to carry out, in principle, the subjection of ecclesiastical property to the feudal military service. The problem of the equal apportionment of the war-burden, by which the later Anglo-Saxon military system had been hampered, seemed thereby solved, and it now became a matter of primary importance for the temporal vassals to insist on the great ecclesiastical possessions continuing to

take their full share of these feudal obligations. On this point the Crown found the whole body of temporal vassals always on its side. It was consequently able still to enforce the mustering of the levies in due proportion to the extent of the ecclesiastical estates, the fulfilment by Churchmen of their feudal services, their attendance as legal functionaries at the feudal tribunals, as well as the punishment of felonies by feudal penalties, and sequestration of their feudal revenues. To all this was added the unlimited power of the King over his legal representatives, the *vice-comites* and lower *geréfas*; and as in case of need these had to lend a strong hand to the Ecclesiastical Court, there followed the contingency of such support being withdrawn in case of conflict with the Crown. But above all stood the unlimited executive power of the Norman Kings, a power which with its fines and penalties was also exercised over the spiritual order.

Hence, notwithstanding his concessions to the Papal See, William I. still felt himself sovereign lord even over his ecclesiastical subjects. Even a Papal remonstrance (1079), to the effect that (1) the Peter's-pence had not been punctually paid, (2) that William had not yet acknowledged the Pope as his feudal lord, was met with the somewhat curt rejoinder of *yes* to the first and *no* to the second point (*unum admisi, alterum non admisi*). Nor would the Conqueror tolerate any provisions of the clergy in their synods in opposition to his pleasure. Without his sanction no officer of his should be excommunicated by the Church, no Papal legate without his permission set foot on English soil.

Nevertheless, this "separation" of Church and State

engendered an antagonistic relation, leading to excesses now on one side, now on the other, which, although settled by compromise, still led to fresh conflicts on other points. Being compelled by his usurpation of the Throne to rely on the support of the Church, Henry I. speedily removed all real grievances, wisely and worthily keeping within the limits of the sovereign power. But under Stephen's usurpation, reckless acts of violence on the part of the Crown were followed by bold encroachments of the Church, insolence of Papal legates, arbitrary promotions of alien clergy to episcopal chairs in England, a growing practice of appeal to the Bishop of Rome, and so forth. And on the restoration of the Royal prerogative under Henry II. there ensued a still more open rupture between the two estates.

Under these conditions a chief object of the compromises was the investiture of the prelates, and especially the appointment of the Primate of Canterbury.\* The schism among the clergy, which had come about in the reign of the Conqueror, owing to the nomination of foreign bishops, had meantime gradually disappeared. The long-continued opposition to the introduction of celibacy, the ill-will manifested towards the Papal legates, and against the filling up of

\* The obscure and much-controverted question as to the election, or appointing, of Bishops and Abbots, is no doubt to be explained by the fact that, according to time and place, certain differences prevailed. The election, which was originally exercised through clergy and laity, naturally led in this respect also to an early ascendancy of the ecclesiastical *Witan*, who, as instructors and guides of the community, submitted the most authoritative proposals, which, thereupon, found acceptance through a "general acclamation." With the development of the royal power, there came into play an overruling influence of the

benefices with foreign clerics, clearly explain why the English clergy themselves were disinclined to see the bishoprics filled through the intervention of the Papal authority. Deference for the views held by the clergy had naturally the result that the King, on occasions of the "Court-Days," or at the clerical synods, gave heed to the Prelates, and occasionally also to the lords temporal. In this way mention frequently occurs of a "*concilium*" or "*consilium*" on occasion of the nominations, without, however, leading to the inference that there was any right of free election.

In a word, these vicissitudes make it evident that even in the sphere of ecclesiastical legislation, no scope had been left for any decisive co-operation on the part of the National Council. Hence the general inference that during the first century of the Anglo-Norman time, a "Witenagemót," possessing a determining power, and having a constitutional right of signifying assent, had altogether ceased, however much this may seem in contradiction with the opinions hitherto obtaining in England.

In later times the Norman "Court-Days" became, from different points of view, the subject of party contention. During the Stuart period, it was considered important to oppose to the exalted claims of the *jure*

Crown as regards the large possessions and the extensive rights for which the Church was indebted to the King. The decisive influence of the Crown is especially to be recognized in the appointment to the Archbishoprics and Bishoprics, which had been transferred to the Royal cities. With the strengthened power and feudal predominance of the Norman Kings, such influence may be said to have been exercised by way of right of appointment. A right of confirmation was reserved even by King John's Magna Charta.

*divino* monarchy a Parliament possessing at least as high and ancient a claim. No less an object of special interest for the art and science of heraldry were those Parliaments-in-arms, with their glittering array of shields and scutcheons, and shows and pageants; for it was the business of the heralds' office to discover an ancestor for the newly-created lord, who had been something more than a mere holder of a Knight's fief, or of a freehold, in order to be fittingly planted at the root of the genealogical tree. The parliamentary factions of a later date were chiefly interested in possessing some such heraldic tree. A view, widely held at the time of the "Reform Bill," in 1832, aimed at showing that the Norman monarchy was altogether of a parliamentary or constitutional character. An essay by Allen (*Edinburgh Review*, vol. xxxv.), which at the time met with general acceptance, endeavoured to prove that "the name, and probably also the constitutive elements, of the Anglo-Saxon 'assemblies of the people,' were completely transformed on the advent of the Normans; but that their powers remained distinctly the same, and have continued even to the present Parliament." \*

\* The notion which antiquarians hold, as to the existence of a feudal representation in Parliament, has altogether overlooked the fact of the social chasm that prevailed between half a thousand inferior Crown vassals and the mighty Earls. The whole conception of the legal status of the monarchy at this time has been equally overlooked. In fact, no King, since the time of Charlemagne, was so favourably placed as the Conqueror for thoroughly reconstituting the monarchy on a uniform system. But William I. and his two sons manifest in this regard an unswerving consistency, such as seldom occurs in history under so many favourable circumstances. Once brought into use, this system of government developed and extended its principles through well-trained officials during the reigns of Henry I. and II.

The thorough investigation of the question, by means of a committee appointed by the House of Lords in 1819 and subsequent years, the five reports of which, "On the Dignity of a Peer," much outweigh all previous researches, after carefully sifting all the documentary data, arrived at the negative conclusion that, under William I. and II., no traces could be found of the existence or organization of an assembly invested with legislative function. These Reports, however, further pointed out that the charters of Henry I., Stephen, and Henry I'. implied that the assurance of the maintenance of the laws of Edward was looked upon as the "law of the land," whence it might be inferred that there did exist a kind of constitution, possessing a legislative capacity, of which a branch charged at least under certain circumstances with the framing of laws, formed an integral part. The real essence of this conception will obviously be found to be at one with the view above set forth.

Hence for the legislative assemblies of the notables a parliamentary body of an entirely new complexion had subsequently to be constituted, independently altogether of the old "Court-Days," which amid the wild confusion of Stephen's reign had fallen into abeyance somewhere about the year 1139. The first attempts made at resistance, however, and the first blow struck for emancipation, had at that time a most unfavourable issue. In the conflict about the succession to the Throne, on the death of Henry I., Stephen or Blois, in order to outbid his rival, the Empress Matilda, had in truly reckless fashion made grants of Earldoms, Crown-fiefs, and State prerogatives. Thereupon the



hitherto orderly system of administration was replaced by the bewildering confusion of the continental feudal system, private feuds, fortified strongholds, violent enforcement of the power of jurisdiction, and of the right of coining, exercised by the greater and inferior Barons alike ; a wild warring of the vassals among themselves, under pretence of siding now with Stephen, now with Matilda. The withdrawal of the active interference of the Treasury, and of the *vice-comites*, was far from leading to the emancipation of Society, which still lacked the necessary coherence for independent self-government. There ensued rather a period of wild, personal violence, which, like the subsequent interregnum in Germany, prevailed for fourteen years. Through the intervention of the clergy a compromise was at last effected, securing the succession to Henry II., son of the Empress, and involving the extinction of the pseudo-earldoms, the razing of three hundred and seventy-five castles, the re-establishment of the jurisdiction of the *vice-comites*, and full restoration of the royal prerogatives, measures which were joyfully hailed by the whole land as a means of redemption from a state of helpless confusion.

VII.—PERIOD OF TRANSITION. ECCLESIASTICAL CONFLICT WITH  
THOMAS À BECKET.

The first lasting blow at the powerful position of the King arose out of a conflict with the Church. A century after the Conquest, Church and State had reached a turning-point in their mutual relations, in which the position of the Church had become much more popular than heretofore.

What the Church had lost by her subjection to the civil and military power, she had recovered through her moral influence, for to her former spiritual mission she had now superadded that of natural mediator between the two hostile peoples. The feeling of fellowship among the clergy had already been sufficiently developed to constitute the Church a rallying point amid these national rivalries, and having now nearly reached the summit of her power, she could no longer give her sanction to a number of State claims opposed to eternal right. Under these circumstances Henry II. came into inevitable collision with the Primate of England on the question of the hitherto recognized royal prerogatives. Occasion was thereby taken by the King to have his claims embodied by a skilful jurisconsult in the so-called "Constitutions of Clarendon," which seemed to express the traditional law in such conclusive form, that they received the ready acquiescence both of the Prelates and temporal Crown vassals. For the solemn confirmation of these doctrines, which had been elaborated during a fourteen days' conference, an extraordinary Council was summoned, at which both archbishops, twelve bishops, ten earls, twenty-nine barons, besides other spiritual and temporal lords, are mentioned as having been present.

After some show of resistance, Archbishop Thomas à Becket himself was forced to yield assent, promising to bide by these Articles *legitimè* and *bonâ fide*. In the hard struggle, however, between his duties as ecclesiastical prince and Crown vassal, he felt compelled to renew his opposition under the saving clause *salvo jure ecclesiæ*, and with reservation to the Papal authority.

Thereupon the King had recourse to extreme measures, and in a well-selected Court of spiritual and temporal Crown vassals procured, on October 17th, 1164, a judgment against the Primate to the *miseri-cordia regis*, which was in the customary way subsequently mitigated to an *amerciament* of £500. But this dearly-bought victory was again lost by the King's violent conduct, the struggle ending disastrously in the martyrdom of à Becket. At the final reconciliation Henry found himself compelled to relinquish certain of his prerogatives, and the breach on this occasion made in the royal power proved to be irreparable.\*

Simultaneous popular reforms, as side issues to this struggle, were now also introduced for the better safeguarding of the rights of the subject. If Henry I. is to be regarded as an administrative reformer, especially in the department of finance, Henry II. may also claim the distinction of having, by the aid of a well-trained body of officials, introduced order at once into the legal, financial and military branches of the administration. About a century after the Conquest there occurred almost coincidentally three important changes—the further centralization of the administration through the itinerant justices, the formation of an official body

\* Consequent upon the truce with the Church, right of appeal to the Papal See was accorded. Through subsequent negotiations, the understanding was come to that no cleric could be brought before the temporal courts for any offence, except in regard to some temporal fief he possesses, or by reason of some breach of game laws. In other respects both sides acted with the elastic mental reservation characteristic of both. So the King undertook to allow appeal to Rome *bonâ fide*, and, furthermore, to abandon *malas consuetudines*, etc.

of Judges, and the first beginnings of a deliberative body, comprising Prelates and Barons.

A delegation of itinerant Crown Commissioners, already begun by Henry I., became henceforth a permanent institution. Such a body was needed for purposes of administration, especially in matters of finance, the Royal privileges having, in the confusion prevailing under Stephen, suffered manifold encroachments. These commissions were also found available for the levying of the *tallagia*, and for a periodical supervision of the official conduct of the *vice-comites*. In connection with this matter there is recorded a wholesale removal of Sheriffs in the year 1170, whose posts were henceforth filled by officials of inferior rank from the Treasury.

On the other hand, itinerant commissioners began to be also employed for the conduct of civil suits, as the still prevailing discrepancies in legal decisions bearing on feudal inheritance, on the rights of feudal landlords over their sub-vassals, and so forth, now called for a definite and uniform constitution of the law in all these respects. Equally urgent was the necessity of withdrawing the more serious criminal cases from the jurisdiction of the hated *vice-comites*, and introducing through Crown Commissioners a more efficient and trustworthy administration of the criminal law itself. The itinerant justices had, accordingly, to deal with a mass of legal business, for which new principles of jurisprudence had to be framed. In order to dispose of these essentially juridical matters, there was constituted in the year 1178 a kind of standing commission (*bancum*), at first consisting apparently of itinerant justices, and partly of members of the Exchequer itself.

The ancient and informal *Curia Regis* now assumed distinctive shape as two permanently appointed bodies of officials—the King's Bench and the Exchequer. The King's formal proceedings with both were conducted by the Chancellor, who, being himself an *ex officio* member of each, issued the writs and processes as from the *officina justitiæ*.

In further connection with these proceedings stands the repeated summoning of the Prelates and of the highest Crown vassals to extraordinary conferences, to advise concerning matters of State. This first came about in connection with the Constitutions of Clarendon, and the judgment pronounced against Thomas à Becket. The unfavourable course of the clerical conflict had given occasion to some further summonings of such extraordinary "Court-Days," in which important reforms of the administration of the temporal law procedure were also submitted for advice and subsequent adoption. (Assize of Clarendon 1166, Northampton 1176, Assize of Arms 1181.) Nor did the King disdain, as in Anglo-Saxon times, to proclaim the King's peace, with advice of his Council. At this conjuncture innovations were introduced in which the popular fundamental notion of a legislative power took fresh life. Instead of the occasional conferences, the whole body of the Prelates, the Earls, and the great Barons were summoned *ad hoc*, and in the resolutions of the Council this *consilium optimum* is even specially mentioned. According to what principles such summonings were effected is open to discussion, but the elements composing the body of Crown vassals, comprising many hundreds of owners and part owners of

small Knights' fiefs, show that the King had as much freedom of action for the summoning of such nobles as he possessed for constituting the *consilia optimatum* of all descriptions. These assemblies were in nowise "feudal Parliaments," but nothing more than gatherings of notables having no permanent standing, and which cease altogether for a whole generation and even longer. But for a while the great Barons had already met together, whenever important advice on matters of State was needed. The right of the Barons had again acquired a certain definite consistency, so that these extraordinary "Court-Days" themselves served at least as weighty precedents for the now approaching

VIII.—MAGNA CHARTA.

The administration of Henry II., vigorous at first, but vacillating towards its close, was followed by that of Richard, the Lion-hearted, venturesome and purposeless, but withal a true embodiment of the times, hence beloved by the people. The Regency established during his crusade soon came into conflict with the great Barons and with his brother, John, so that during the King's absence England again beheld the nobles divided into two hostile camps. But on his return from captivity his personal rule was revived. He held a conference (*colloquium*) after the old fashion; sat in judgment on his brother, John; levied a tax of two shillings on each plough-land, at last throwing away his life in one of his ceaseless broils on the mainland. But the almost continual absence of this knight-errant from English soil could not but prove advantageous for a tolerably efficient administration of the interior.

But the ensuing reign of John seemed once more to revive all the worst features of the Norman system. By the murder of his nephew, Arthur, who possessed a nearer claim to the Throne, this whilom disloyal son and traitorous brother forfeited his feudal lands in France, leading thereby to the permanent severance of Normandy from England. With the Papal See he involved himself in a conflict, begun in violence, ending in abject submission. In the administration of the State he interfered more harshly than any of his predecessors, and by his cowardice and cruelty, his greed and his arbitrary dealing, alienated, in turn, all classes of the nation. He thereby at last brought on a crisis, in which all the elements of resistance were combined in common action against his autocratic rule.

At the head of all these conflicting elements now stood the Church, which, through the issue of the ecclesiastical conflict conducted by Thomas à Becket, had displayed a power rivalling that of the Crown itself. The time had now approached when Innocent III., at the summit of Papal ascendancy, proclaimed the Church at the great Lateran Council to be the universal sovereign of Christendom. Through his rupture with this potentate, John saw himself publicly excommunicated and deprived of his kingly office, and the interdict proclaimed on English soil, absolving his subjects from their Oath of Allegiance. But the temporal vassals still adhering to his party, a formal sentence of deposition was issued by the Pope in the following year (1212), and its execution entrusted to King Philip of France. Thereupon the fear of a French invasion, in concert with the united action of his own vassals,

determined the King to make unconditional submission. On May 15th, 1213, John resigns his crown into the hands of the Pope, "makes over to the Church and the Pope his kingdoms of England and of Ireland," in order to receive them back from the Church in the character of a feudatory, whereupon absolution is granted through Stephen, the Primate appointed by the Pope. Yet, notwithstanding his elevation to the primacy by the Pope, Stephen himself became the patriotic leader of the clergy, now animated by a national sentiment, and during the ensuing rupture accepted the part of guide and mediator, bearing himself in an arduous position with firmness and integrity.

In the relations of the national forces, next to the hostile ecclesiastical party stood the now united war-like Crown vassals. Since the Crusades, and in consequence of them, the military element had become more than ever conscious of its own importance. The recognized equality of this element throughout Christendom had fostered a fellow-feeling, which under the walls of Jerusalem expanded into a common code of honour, binding even on rulers themselves. While the great Crown vassals and the inferior class of knights thus began to feel themselves united by this common bond of union, both were deeply offended by the capricious imposition of scutage-money, which John had arbitrarily raised to two marks, and kept up from year to year, and by the levying of feudal "*auxilia*," without considering whether it was required for some Court pageant, or needed for some pressing emergency. Further irritation was caused by the occasional levying of a tax on movables, which put the vassal on a footing



with subjects who were taxable by the Exchequer, in direct contravention of assurances given by the King's predecessors. Under the same government the Exchequer and the administration of the *vice-comites* and bailiffs, with their endless system of "amerciements" and "fines," reached the highest pitch of exaction. John also acted with unwonted rapacity as protector of orphans, and in his shameful profligacy spared neither wives nor daughters of his great vassals.

Meanwhile the free socagers and burgesses not bound to feudal service, also found their position greatly changed. By the King's license, and on condition of payments, alienation and partition of feudal estates had come into operation on a considerable scale.

Marriage and death, acquisition through an heiress, sub-tenancies, and even allotments through purchase, such as were then permitted in order to procure the necessary outlay for the Crusades, had tended to bring about a more extensive settling of freemen on the land. Monetary and mercantile relations, developed through the Crusades, had enriched London and the sea-port towns, and since the time of Richard I. had conferred on a large number of "burhs" important privileges, together with a certain amount of independence. But, unlike those of former time, these classes also now felt equally disposed to make common cause with the spiritual and temporal Crown vassals against despotism.

But it was, above all, the progressive blending of the nationalities which had, imperceptibly, sapped the foundations of absolutism. Five generations in succession had already lived under one Church, one King, one administrative system, in the enjoyment of equal

peace, or exposed to the same oppression. The fact of living on a common footing had rendered marriages between the *Angli* and the *Francigenæ* a matter of daily occurrence. Thus there gradually sprang up a new insular population, which, through the final separation from Normandy, had attained to the consciousness of its own individuality. But in this reconstitution of the national elements the Anglo-Saxons acquired the ascendant, not merely through their numbers, but also from the characteristic qualities they had uninterruptedly maintained in the family life, social customs, and language. As compared with the sparkling but fickle Frankish section, the simple, moral earnestness of this family life, ennobled by the action of the Church, showed itself, in the long run, as the sturdier element, which in Church and State, in community and family, assimilated the foreign race, and, despite many and lasting differences of language and temperament, became consolidated with each successive generation into an essentially Teutonic nationality. While upon the Continent Romans and Romanized Celts crowded to the Courts of the great, the Saxon Thane and Ceorl had remained, through hard times, firm and fast in their secluded homesteads. While the pliant Northmen had, on settling in Normandy, after a few short generations adopted the language of their wives, and become Frenchmen in life and manners, the alien Roman element, despite its dominant social position maintained for centuries, had failed to graft on the English tongue one-tenth of their speech, introducing into the modern English "Our Father" not more than three foreign terms, as has often been pointed out by philologists.

In a word, it was the characteristic features of family life, refined by the National Church, that ultimately decided the question of national ascendancy.

Such were the elements that were brought together in the great historical event of June 15th, 1215, which, under the name of Magna Charta, may be regarded as the groundwork of the present constitution. A few months after the humble submission of John, and when the feeling of the country had been displayed in the armed masses marshalled against King Philip, meetings had been held of the great Barons sustained by the experienced counsel of a large section of the Prelates. By Archbishop Langton himself the temporal lords were led to adopt, as a precedent, the then almost forgotten charter with which the reign of Henry I., at one time so full of promise, had been auspiciously begun. The draft of a similar charter was accordingly carefully prepared with due regard for all the then prevailing needs and interests. Towards the Easter of 1215, there was assembled at Stanford an army consisting of 2,000 Knights, with numerous followers, horse and foot. It is a significant fact, that among them there was scarcely a single name to be found dating from the distinguished Norman families belonging to the first century after the Conquest, but numerous Barons from the Northern Shires, and especially a large number of members of the official nobility, who had, since the reign of Henry I., risen to high offices of State. They chose Robert Fitz-Walter, Lord of Dunmow, as "Marshal of the Army of God and Holy Church;" obtained release from their feudal fealty by the Canons of Durham (May 5th), but gained no firm

stand against the King and his troops until, by agreement with the citizens of London, they occupied that vitally important stronghold. In this state of things terms of peace were entered into, on the meadow of Runnimede (15th-19th June, 1215), where the King, with a small following of eight Bishops, and fifteen Barons and Knights, on the one side, and the vassals, fully armed, on the other, treated with each other, the Earl of Pembroke acting as mediator. The draft, revised and completed by a council of legal experts, was acknowledged by the King affixing his Great Seal to the deed, which was thus formally declared to be the Royal Charter.

As regards the Church, Magna Charta leaves everything undisturbed, as under the charter previously obtained on January 12th, 1214, according to which, from thenceforth, in all churches, cloisters, cathedrals, and convents, "freedom of election is to prevail," as concerns both higher and lower clergy, so that in case of a benefice falling vacant, "the electors may exercise free canonical election, and, on election completed, they have to ask for our consent, which we will not withhold, saving a *rationabilis causa*, rightfully proved against the same, in consequence whereof we should not give consent." (Stubbs, "Select Charters," 288.) The special articles of Magna Charta therefore involved only a limitation of the temporal prerogatives, which, in conjunction with the civil and fiscal administrative system of the times, were clearly understood.

The feudal prerogatives of the Crown hitherto in force remain untouched, but arbitrary interpretation in fiscal matters, and the extravagant demands of the

Exchequer, are limited by reverting to stipulated sums—the *relevium*, on change of ownership, for a Knight's fief, 100 sh. ; for an Earl's demesne, 100 lb. silver ; a great Baron's, 100 marks. The feudal lord shall not "waste" the estates during usufructuary feudal wardship, but keep them in fit order ; feudal heirs shall be married as befits their condition ; the widow shall have her widowhood, and shall not be forced to marry again. When "aids" (*auxilia*) are demanded from the feudatory in addition to the three cases firmly established by tradition (ransom of the King from captivity, the knighting of the eldest-born son, and marriage of the eldest-born daughter), or, when in lieu of a feudal service in war there is required a payment in money (*scutagium*), thereupon an arrangement shall be made with the body of Crown vassals, whose consent shall be asked in an assembly whereto the greater Barons, *majores barones*, by name, and the lesser Barons, *collectivè*, are to be summoned by the Sheriffs. (Articles XII. and XIV. of the Charta.)

*Legal limitations of the Prerogative of Justice.*

The ordinary business of civil process is no longer to follow the Court, but to have its fixed abode. Civil assizes are to be held by itinerant justices. Arbitrary and disproportionate fees are to cease, and from no one is justice to be withheld. No *vice-comes*, no Baronial reeve, or local Court-reeve, shall henceforth exercise any criminal jurisdiction over the *placita coronæ*. The main point, however, lies in the fundamental Article XXXIX. : "That the body of a freeman be not taken or imprisoned, nor that he be disseized, nor

outlawed, nor exiled, nor any way destroyed, nor that the King pass sentence upon him, or imprison him by force, but only by the judgment of his peers (*judicium parium suorum*) or by the law of the land (*per legem terræ*)." This is the repeated guarantee of legal protection according to the "common law," and by means of a court established conformably with custom,—consequently the renewed assurance to maintain the *leges Eduardi*, now more distinctly defined in its present form, and demanded by the great vassals themselves, hence by them also again guaranteed to all the *liberi homines* of the kingdom.

The legal restrictions of the *police jurisdiction* bear, in the first place, on the vital point of arbitrary procedure: all fines (*amerciements*) are to correspond with the measure of the offence; for determination whereof there must concur the co-operation of the freemen after the manner of the "finding" of a court (*per sacramentum proborum hominum de vicineto*); and on the enforcement of such penalties the freeman shall retain the needful means of living, the peasant his implements of labour. The *comites* and *barones* also shall be fined (after assessment made) by the members of the court. Further, to all the subjects in time of peace, free passage is assured by land and water, to all merchants freedom to transact all business free from all arbitrary tolls and impositions. One standard of weights and measures shall prevail throughout the land.

Legal limitations of the prerogative in matters of *finance* are comprised already in the above-mentioned articles concerning feudal aids in money, and fines on change of ownership. The same arrangements were

henceforth to hold good with regard to "*auxilia*" from the city of London. To the capital and all other towns and seaports their traditional liberties are guaranteed. No town and no free settler shall be required to build bridges, where this has not been so of yore. Provendering and wainage without consent of owner shall be allowed only on due payment in money. Further abatements of the rights of the Exchequer are promised for the security of creditors, on the settlement of inheritance. Lastly, a special group comprises abatements of the forest restrictions, from which a special *Charta de foresta* was soon afterwards drawn up.

This charter of liberties differed from those prevalent on the continent, especially in the fact that the Prelates and vassals do not think of themselves alone, but also extend the necessary securities to the classes below them. The liberties guaranteed to the Crown vassals are by "the private feudal owners to be acknowledged also in favour of their own vassals (*erga suos*)."

To the towns generally their ancient liberties are guaranteed. The right of the Exchequer over communities not bound to serve in war (*tallagia*) remains still undisturbed, but an approach is already made towards uniformity in favour of the City of London. Where the object of the security permits, the freehold is named in conjunction with the military fiefs, and side by side with the military vassals are also mentioned the *libere tenentes*. Many clauses concern the *liberi homines* generally, without reference to the manner of tenure, and are thus applicable also to the free Crown peasantry. Some clauses are even made directly in favour of *villani*,

such securities having apparently been subsequently inserted by advice of the Prelates.

According to modern notions, the most striking feature is the absence of what are nowadays called "Parliamentary Rights." No right of assent to the issue of Royal ordinances, no right of assent to the levying of taxes, and no guarantee of periodical assemblies for the treatment of national grievances; nothing but a promise, that in regard to the two positive changes in the legal conditions of feudal ownership (demand of money in lieu of service in war, and money aids, except in three feudal cases), the assembled Crown vassals shall be heard and shall give their assent. More than this the English Crown vassals assembled in arms did not venture to claim, although acting in concert with the Church and upheld by the outspoken sympathy of the land, at the very moment of their triumph. In the face of this fact, the fanciful picture of "an assembly of the haughty Crown vassals in the twelfth century" fades away, and the proceedings of the following centuries, no less than the public records of the time, clearly show that the present rights of the English Parliament were acquired much later as the outcome of manifold vicissitudes.\* A similar remark applies to the much investigated guarantees for the due execution of Magna Charta. As the granting of a personal and revocable letter of grace to the Prelates and Barons

\* To the lack of juridical and historical training in England must be attributed the fact that, not even yet, has the view been reached that the whole development of the Constitution in the thirteenth to the fifteenth century would involve a contradiction, were the notion as to a Parliament possessing legislative capacity having previously existed to find acceptance.



could not suffice, recourse was had to the expedient of imparting to the Charter the character of a treaty of peace concluded by a solemn oath according to feudal Custom. But no oath of King John could be of much value, and might at any moment be set aside by dispensation, while under the prevailing constitution of the Royal Courts and Exchequer all legal restrictions of the public administration might still be easily infringed. Hence to meet these defects there was superadded the appointment of a permanent commission of the Crown vassals, with the expressly granted power of feudal distress over the Crown possessions. The Committee of Resistance is established by Article LXI., with the following regulations. Twenty-five Barons, among whom the Mayor of London, shall be elected as Conservators of the Charta, and on a case arising, shall decide by election, and by a majority of votes. And in case the King infringe any article, any four of them shall apply to the King, or to the chief judge, for remedy, and in case of refusal shall summon the *communa* (most likely all the vassals) to require obedience. "And these Barons, with the commonalty of all the land (*cum communa totius terræ*), shall distress the King all the ways they can (*distringent et gravabunt*), to wit, by seizing his castles, his lands, and possessions, and by what other means they can, till it be redressed according to their own liking, saving the person of our lord, the King, and of the Queen, and of their children. And when it is redressed, they shall obey the King as before."

This clause is so far in conformity with the system of mediæval feudal government, as the latter is founded on the mutual relationship of feudal protection and

feudal fealty, and hence contractual. The vassals thereby express the fundamental notion of their relationship, as it existed in Normandy and France, but with one important difference. While on the Continent the individual vassal regarded himself as competent to pronounce upon the question, as to whether the feudal lord had infringed his duty of protection, and often enough upon the smallest occasion sent his notice of renouncement, here the nobility acts corporately. The Barons alone acting collectively, and represented by duly-appointed persons, are declared empowered to resist ; but no sanction is given to any private feud against the King. In fact, there is contained in this harsh clause nothing more than a recognition of the customary right of distress as it pertains to the King, and in its contrary application, in the case of the vassals at large, as against the King. A contractual right of distress was so much bound up with the legal customs of the Middle Ages, that the Committee of Resistance almost loses thereby its apparently revolutionary character.\*

Magna Charta contains remarkably little of constitutional law, but already affords the main features of the State development in England. "The Norman nobles were now obliged to choose between the island and the mainland. In England, they could not entrench

\* Only since the Stuart period has any deeper acquaintance with Magna Charta existed, to which Chief Justice Coke was the first to append a practical commentary. Blackstone's Great Charter, 1759, is the first to afford a correct text of the original document which is now preserved in the British Museum. An excellent copy of the text, with variants, is given by Stubbs, in "Select Charters," p. 296.

themselves in walled castles against the King, but, from the fact of the impossibility of individual resistance, could only, as a body, resist the exercise of arbitrary power, thus striving, in their own behalf and that of the people, for common rights and securities, and in this wise they succeeded in founding the Constitution (in contradistinction from the feudal lords of the Continent) on an equal footing of legal protection for person and property alike. These nobles, who for generations had endured the arbitrary rule of the absolute Kings, together with the burdens of the State, began, for this very reason, to regard it as their duty to act in this wise." In this sense Magna Charta was a pledge of reconciliation between all classes. Its existence and ratification maintained, for centuries, the notion of fundamental rights as applicable to all classes, in the consciousness that no liberties could be upheld by the superior classes for any length of time, without guarantees of personal liberty for the humbler also. As this right of property and individual right on the part of the *liberi homines* was, under the Norman kingdom, established for the benefit of the individual, and as the power of the Crown had from the outset prevented the creation of an unequal (*jus iniquum*) right of the nobility, and burgesses, and peasants, all efforts were thenceforth directed solely to set up safe barriers against personal rule, and so long as the conflict took this direction, the clergy and people are always found siding with the nobles.

Instead of the former ratifications of the *leges Eduardi*, a constant desire is henceforth felt for the exclusive ratification of Magna Charta. The practical

sense of the nation laid so great weight on this point, that down to the close of the Middle Ages the confirmation of Magna Charta had been demanded and granted no less than thirty-eight times.

But the mighty uprising of the nation was not yet followed by the peaceful enjoyment of its hard-won liberties. The great struggle for liberty was in the first instance succeeded by the political apprenticeship of the Upper House, now in course of being constituted.

#### IX. FIRST ATTEMPTS AT A PARLIAMENTARY GOVERNMENT.

The first essays towards a concentration of power in the House of Lords during the succeeding half century afford proof that even a lawful uprising of Society, in a moment of excitement, against the ruling power, could not at once establish political freedom, but that a free Constitution could be acquired only by constant efforts and familiarity with settled State institutions.

King John had accepted Magna Charta only because he had never any intention of keeping it. At his own request he was at once released from his oath by Innocent III., ever intent on securing the interests of the Church. The whole transaction was disapproved of and condemned by a Bull, which stigmatised the agreement as an "unlawful, unallowable, and blameworthy Act," declared the Barons worse than Saracens, and proceeded forthwith to put under ban those who took part in the rebellion.\* The Crown was, in fact,

\* The mode of action followed by Innocent III. in regard to the proceedings connected with Magna Charta has never passed out of memory in England, as a reminder of the way in which the Roman Church was wont to subordinate religious and moral

merely taken by surprise, but even though in the person of an unworthy ruler, was still powerful. John accordingly withdrew, and, as controller of the revenues and of the fortified castles, collected bands of mercenaries with the aid of his well-filled exchequer, against which the nobles of the land were unable to hold head, from want of money, and want of concord in their own ranks. Despairing of the issue, the rebels courted the aid of a French prince with a foreign army, whereupon there ensued a doubtful contest, in the course of which John died (October 17th, 1216).

His lawful heir, *Henry III.*, was but nine years old, and the majority of Prelates and Barons decided in favour of his succession. For the first time since the Conquest, the reins of power were in the hands of a minor, for whom the great Earl of Pembroke acted as

considerations to material interests. A recent Jesuit writer in Germany, Victor Cathrein, "English Constitution," satisfies himself with the remark :—"The declaration of the Pope has caused a flutter of dust, nearly all Protestant writers indulging, in this particular, in obloquy and invectives against Innocent and the See of Rome." The volume is not without interest, as showing how, from a clerical point of view, history is now being handled everywhere. The slight influence exercised by the Papal See during the most flourishing period of the Anglo-Saxon monarchy (as shown by the data furnished by Lappenberg, Kemble, and Palgrave), is disposed of by the same writer at the opening of the work in a long polemic against the author of this volume. The Anglo-Saxon Church is held to have been always in the most praiseworthy and complete allegiance to the Roman See. The "foolish attempts" of Henry II., in opposition to the Church, are severely commented upon. The submission of John to the sovereignty of the Pope is stated to have been made *communi consilio baronum*. "Better had it been for the Barons if, instead of rebelling, they had appealed to the superior decision of the Pope in all the contentions that prevailed," etc. The method of reasoning here adopted consists in passing over all the leading facts, and in marshalling what remains according to the Roman point of view.

Protector. This is the first example in English history of a great statesman being called upon to carry out principles like those proclaimed in Magna Charta, in which he himself had acquiesced in his character of mediator between the conflicting parties. And in point of fact, by a Council held at Bristol Magna Charta was confirmed with unanimous consent, including even that of the Papal legate, but with the omission of certain articles. "The first charter," it says, "had contained certain grave and doubtful points, which the King hereby for the time being withdraws, until he has treated thereof in full council."

Omitted in the first place was Article LXI., containing a provision for the forming of national Committee for the upholding of Magna Charta. The Committee of Resistance had been constituted, but its establishment had led to a civil war, during which the Barons had paid homage to a foreign prince. The first exercise of its powers had been affected by a taint, which, in the altered state of things consequent upon the death of John, brought about a rupture between the Barons themselves. Hence the article was quietly omitted, as if in abeyance through the disappearance of the circumstances in which it had originated. Certain other articles, bearing on the restriction of the King's revenues (concerning demesnes, forests, protection of Jews), were also omitted, undoubtedly because of the Regency being at a loss for money.

Very significant, however, was the omission of Articles XII. and XIV., concerning the summoning of the Prelates and Barons when "scutage" or extraordinary "aids" were called for. The reason of such

omission, hitherto unexplained, was, beyond doubt, the following. According to this assurance, all the Crown vassals (Barons) were to be summoned, the greater vassals by special writ, the lesser by a general order of the Sheriff. But where was the line to be drawn between the greater and the lesser? Through the fact of holding from the King all Crown vassals were on a footing of equality, all having a right to a *judicium parium*, and all, since the Crusades, being animated by a kindred fellow-feeling. Hence the great vassals could not on principle exclude their  *pares* in feudal ownership from a right of assent, while on the other hand the great Barons were unable to recognize the existence of a real parity between themselves and the at least tenfold larger number of simple Knights and petty holders. Still less were the great Prelates inclined to treat the minor clergy and priests with cure of souls, or the crowd of simple Knights as being on a like level with themselves. And yet, in the actual state of things, no means existed of curtailing the right possessed by the smaller nobles to signify their assent. Such a means had been found in Germany, where the preponderance of the great Prelates, Dukes, and Princes in the army, in the Courts of Law, and civil administration was so great, that the smaller Lords and Abbots were glad to keep away from the national assemblies, while the smaller nobility were content with signifying their assent by the occasional presence of one or another member (*votum curiatum*). In England, the difference between the higher and lower nobles was effected by so many imperceptible transitions, that the constitutional idea of collective voting

could scarcely arise. Unless a Parliament of the Polish type was to be constituted by the tumultuous gathering of the lower nobility, the *moderamen*, a general control was necessarily left to the Crown. Hence, by omitting Articles XII. and XIV., the great Barons, who, through the vicegerent Pembroke, practically ruled the land, tacitly reverted to the traditional system—*i.e.*, to summon by writ a select group of Crown vassals, prominent by their possessions, office, military experience, or any other distinguishing quality. Thus the older custom of the King's Court and Chancery remained in vigour, just as in Germany and in France the King continued for centuries to exercise a decisive control in the summoning of the *concilia optimumum*. The practical difficulty of drawing a line of demarcation (*census*) between the greater and lesser nobles endured for centuries, which sufficiently explains why, at the thirty-eight successive confirmations of Magna Charta, Articles XII. and XIV. were constantly omitted.

Thus the public administration lapsed into a position not at all unfavourable for a vigorous, keen-sighted ruler, as on the Monarch himself were still dependent not only the Exchequer and King's Court, together with the whole body of Sheriffs and local bailiffs, but also the summoning of the indispensable *Concilia optimumum*. On the other hand, despite all guarantees of Magna Charta, a well-nigh unlimited government by party was more and more developed by the appointment of officials and of the *Concilia* in the interest of one class.

Within these broad outlines was mainly conducted the fifty-six years' administration of the weak and pusillanimous Henry III.

7



During the first sixteen years (1216-1232) an aristocratic government prevailed, which, acting in the name of the King, conducted public affairs under trying circumstances with a certain efficiency, neutralising the dominal influence of Papal legates, and at last getting rid of the numerous foreign mercenaries still besetting the land. In order to raise the necessary and extraordinary subsidies, assemblies of the Prelates and Barons were repeatedly summoned, which, after some discussion, granted the required moneys.

At the Council of Oxford held in the year 1227 Henry had no doubt already declared himself of age, without formally confirming Magna Charta, as was at that time usually expected.\* Nevertheless for the next five years he left the management of affairs in the hands of his approved Councillors, who still succeeded in procuring the necessary supplies.

But the shameful dismissal of the well-deserving Chief Justice, Hubert de Burgh, ushered in a second period of personal rule of Henry III. (1232-1252), which presents the picture of a confused conflict between the foreign favourites and personal adherents of the King on the one hand, and the great Barons, soon joined by the patriotic Prelates, on the other. Unwarned by

\* According to Wendover-Paris, III. 122, he is said to have torn up the Charter of Liberties, with the declaration that he was not bound to adhere to any act of State drawn up during his minority. This statement is questioned by Blackstone and other important authorities, or, at most, limited to the Charta de Foresta. Possibly the contradiction may be explained in this way, that the incident was true, but that the action of the young King remained ineffectual, because the original of the Charter remained intact in the Record Office, and was, in fact, during this very reign repeatedly and solemnly confirmed.

the disastrous consequences which a preference for foreign favourites had already brought upon Stephen and John, the King placed himself from the first completely in the hands of alien advisers. The nomination of Bishop Peter des Roches, from Poitou, at once called forth a storm of indignation on the part of the great Barons still accustomed to the government of the Regency. In the Colloquium of Oxford, 1233, the Earls and Barons refuse their personal attendance, with the defiant declaration, "that they will never obey the summons of the King, and will choose another King, if he dismiss not the Bishop of Winchester and the Lords out of Poitou." And when the Barons appeared in arms in answer to the third summons, the King rashly proclaimed their banishment, with forfeiture of their estates. At the next Colloquium, the Primate of the kingdom even threatened the King with excommunication unless he changed his fashion of governing. This time the King yielded, dismissing his obnoxious advisers, granting amnesties to the Barons, and entering into tolerably amicable relations with the great Lords, who now signify assent to the required "aids." On the occasion of a Council held about this time (1236) at Merton, a subject of deliberation was a not unimportant legal principle, which was regarded by later jurists as the first "statute of parliament."

Unfortunately the situation was soon again aggravated by the hopelessly fickle disposition of Henry. An uncle of the King, with a group of relatives, formed a new ruling clique about the Court. The French party obtained possession of the great fiefs, and, in order to set aside the resistance of the great lords against the alien

ministers, they resorted to the bold expedient of leaving the chief offices of State unfilled, entrusting the central administration to a body of minor officials. At the Concilium held at London in 1238 the great lords again appeared in arms, when the King, after prolonged discussions, promised, upon oath, to conduct the government through a certain number of reputable persons. At a new Concilium at London (1240), the Bishops already appear in the foreground, with thirty articles of complaint touching violations of Magna Charta. The foolish compliance of the King with the unmeasured demands for money on the part of the foreign relatives of his mother and his wife, as well as of the Papal legates, induced the chief spiritual lords more than ever to head the resistance both against the King and against the Roman Curia. At the Concilium of London (1242), to which was issued a solemn summons for the treatment of "affairs of State" (*ad tractandum nobiscum de arduis negotiis, statum nostrum et totius regni nostri specialiter tangentibus* \*), after keen discussion, aid in money for the war against France was refused. At the Concilium in Westminster Hall (1244) the nobles expressed a declaration in common, touching the manner of nomination to high offices, etc., which the King refused, promising, however, general observance of the guaranteed liberties. In the following year the great lords again refused an aid for the war against Wales. The next great assembly, held in London (1246), is for

\* A summons "*ad ardua negotia regni*" occurs already in the reign of John (1205), and again at a time of sore need (1213). At this period the summoning assumes an official form of summons.

the first time spoken of by historians as a "*Parliamentum*." Even two years earlier, in an official act, the events leading to the framing of Magna Charta had already been incidentally described as *Parliamentum Runemede*.<sup>\*</sup> From this time forth the designation *Parliamentum* is often employed, without however superseding the older names: *concilium colloquium, curia*, etc. A Concilium held at London (1248) again refused an aid in money, and presented a list of grievances. In the following year (1249) the great lords already put forward the direct demand that the Chancellor, Chief-Justiciar, and Treasurer of the Exchequer shall be named "with their concurrence." By way of counterpoise, Henry endeavoured on this occasion to win over the people by administrative measures conceived in a popular sense: he personally assembled the Sheriffs in the Exchequer, recommended to their protection the Church, widows, the free peasantry, as well as strict watch over all encroachments of landlords on their tenants, etc. At the Council of London (1251) a charge was entered of high treason against Chief Justice Henry de Bath. In the year following the clergy also refused the Papal demand of a tenth from their manors for a crusade, so that the strained situation was rapidly tending towards a violent solution.

With the year 1252 began a third period of this reign (1252-1266), in which the King came under the controlling influence of the Crown vassals. The discontented Barons found fitting leaders in the powerful

<sup>\*</sup> The next example of the word *Parliamentum* is in an official document four years later, in 42 Henry III. (*Vide* I. Peers Report, 91-99, 461).

Earl of Gloucester and of the King's brother-in-law, Simon de Montfort, experienced alike in war and in statecraft. To the internal and external complications was now superadded the vain striving, on the part of Henry, to obtain the crown of Sicily for his son, involving him in heavy money obligations towards the Pope, while the hopelessly bad internal administration led to chronic money difficulties. In the year 1253 the clergy no doubt again granted a tenth for another crusade, and the vassals "scutage" for an expedition against Gascony, in return for a fresh confirmation of Magna Charta. But in the following year the Crown vassals refused all aid in money. At the Parliament held in London (1255) the King applied anew for an *auxilium*, which the Barons met by demanding the strict maintenance of the Charters, and the nomination of the Chief Justice, of the Chancellor, and the Master of the Exchequer, "who shall not be removed without the advice of the general assembly of the kingdom." The matter was adjourned; but at the next assembly the lords declare that "the King has connected himself with the Sicilian business, without the advice or consent of his vassals; that they had not *all* been summoned according to the requirement of Magna Charta, and would not, consequently, give any answer, or grant any aid, without co-operation of the others." In the following year the great lords and clergy again refused an "aid" for the war in Sicily. In the very next year (1257) the King no doubt received another extraordinary "aid" from the clergy, on the promise of the inviolable observance of the Charters: three weeks later, however, both clergy and Barons again refused an "aid"

for the war in Sicily. At the Parliament in London, April 10th, 1258, the Barons at last promise a *commune auxilium*, if the King will reform the administration of the kingdom. The King promises, on oath, that this shall be done through twelve loyal men of his Council, and twelve others, who shall be chosen by the *proceres* themselves. The feeling of discontent had, meanwhile, risen higher and higher. The Council held at Oxford on June 11th, 1258, which in the King's writ itself is "*Parliamentum*," was attended by the Prelates, Earls, with "nearly 100 Barons," and thereupon began protracted proceedings and proposals for the better shaping of the government of the kingdom, the model of which the nobles obviously sought in the administrative system prevailing during the Regency at the beginning of Henry's reign. Later history has assigned to this assembly the name of the "Mad Parliament," although the overbearing resolutions of this assembly offer nothing more than the usual manifestations occurring in the conflict between State and Society. A Committee of twelve (two Bishops, one Earl, nine Barons) were to assemble in conjunction with twelve others nominated by the King, "out of his own Council;" these, in their turn, name four elective lords, who, on their part, appoint fifteen persons as fitted to conduct public affairs—in fact, a sort of Ministry of State. A Commission of twelve, as a permanent parliamentary Committee, was further to take its stand with controlling power by the side of the Crown administration. For the special purpose of advising upon proposals for aid in money, another Committee was also appointed, consisting of three Bishops, eight Earls, and thirteen Barons. Further

resolutions show similar schemes, as in the great deliberative assemblies of Germany. Thrice annually Parliaments shall assemble, and these legal assemblies shall also be attended by the advisers of the King for the transaction of all business "concerning the State," in so far as may please the King. Meanwhile, by an "order," it is appointed that each Shire shall choose four Knights, for advising and reporting grievances at the next Parliament. In consequence, however, of the manifold differences of opinion, the proceedings were indefinitely protracted. A profound dissension in the King's family itself, and mutual recriminations extending over years, had meanwhile fostered a bitter and violent party-spirit. The definitely elected governing body of fifteen members expelled the near relatives of the King, and protracted its stay in office, but very speedily came into conflict with its powerful supporters at large. The "nearly 100 Barons" who took part in this Parliament, gave to the contending nobles such a preponderance, that the Bishops and Abbots found themselves, at the appointment of committees and otherwise, pushed into the background. Despite manifold consideration shown for them by the Barons in the elections, the smaller nobles (*communitas bachellarie Angliæ*) appear to have been dissatisfied, and soon after presented a written complaint and an address of loyalty, which was directed to Prince Edward. The disunion amongst the Barons increased visibly, and with it the confidence of the Court party. In the Parliament at Winchester (1261) the King produced a Papal Bull, absolving him, with his adherents, from his oath in connection with the provisions of Oxford. On

the other hand, the Bishop of Worcester and Simon de Montfort summoned an assembly at St. Albans, to which were also invited "three Knights from every Shire." The King, however, on the same day, convoked a "*concilium*" at Windsor, directing the Sheriffs to send the said Knights to a conference with the King. To avoid open strife, the conflicting parties agreed to accept the arbitration of the King of France, which proved to be entirely in favour of the King, declaring the provisions of Oxford null and void. But at the Parliament of Oxford (March 12th, 1264), the Barons held fast to their resolution that "The provisions solemnly sworn to are founded on Magna Charta, and they will stand by them to the end of their lives." Immediately after followed the "War of the Barons," under the leadership of Simon de Montfort. The King was routed, and taken prisoner, at the battle of Lewes (May 12th, 1264), and on May 25th a proclamation of peace was declared, and in twenty-nine counties conservators of the peace appointed with full powers. The new governing body constituted itself a triumvirate, consisting of Simon de Montfort and two of his intimates, with a Committee of three. On the 4th June writs were issued in the name of the King, summoning the Prelates and Barons to a Parliament, to which four Knights out of each Shire were again summoned. But a rupture, foreboding serious consequences, now ensued between the party leaders, Simon de Montfort and the Earl of Gloucester. At the instance of the former Parliament again assembled on June 20th, 1265, in London, to which were summoned more than a hundred Prelates, but only five Earls and seventeen Barons, the latter belonging



apparently to the Simon de Montfort party. In these writs it is expressed, for the first time, "that the Sheriffs have to return to this assembly two Knights out of each Shire, from a number of towns each two burgesses, and from the five seaports each four men." But soon after Prince Edward succeeded in escaping from the custody of the Barons (May 28th, 1265), and surprised the rebels. After the battle of Evesham, in which Simon de Montfort was killed and cruelly mutilated, the party of the Barons was, in the course of a few months, completely broken up.\*

The now ensuing fourth Epoch (1265-1272), concluded with a reconciliation. In consequence of the victory achieved by the Conservative party, the King again obtained the appointing to all Royal offices. To the Parliament at Winchester (September, 1265) were summoned all the Bishops, saving the five closest upholders of Montfort, and also a number of loyal Crown vassals. The estates of the rebels were forfeited and divided among the King's friends. Nevertheless the reckless proceedings and the faithlessness of the King drove the Barons again into open revolt. At the Parliament of Kenilworth (August 24th, 1266) a compromise was at last arranged through intervention of a tribunal of arbitration, consisting of twelve Prelates and Barons, with the Papal legate and Prince Henry as chief

\* A copious source of original data, combined with a just appreciation of the man who after death became so popular, and was revered as a martyr, is to be found in the work of Ch. Bémont, "*Simon de Montfort*," Paris, 1884, containing a thorough survey of the parliamentary proceedings, and position of parties in that period, interwoven, however, with numerous misconceptions.

umpires. Such was the so-called *dictum de Kenilworth* which was published and confirmed at the Parliament of Northampton, the adherents of Montfort being reinstated in their possessions on payment of heavy fines. In the next Parliament, at Marlborough, important measures were enacted, which, by the subsequent practice of the courts, have been regarded as constitutional statutes of Parliament (*statutum de Marleberge*). On the 13th January, 1271, at a Parliament held in London, the lords who had been dispossessed of their estates were reinstated *per communem assensum*. In the following year the King died.

The fitful course of events during this period may be summarized, in their main features, so as to afford a clear notion of the precedents, whereon, from this time forth, English parliamentary law has been framed. The progressive advance in this series of precedents comprised the following points :—

(1) *The right of assent of the Crown vassals* for the levying of "scutage" and extraordinary aids has been established from more than twenty precedents, and this both as concerns their assent and their refusal. The Omission of Art. XII. and XIV. relating to the granting of scutagia and auxilia found its set-off in the practice followed in relation to assent and refusal.

(2) *In connection with the assent to the levying of taxes*, there came again into operation the participation of the great lords in the issuing of royal decrees. The law-books of the time hold that such a *consensus* is no longer to be regarded as a mere matter of

form, but rather as a strengthening of the decrees, even supposing the King presumed to alter the *Assize* by his own personal action or by instruction addressed to the authorities.

(3) *Cases occur here and there of attempts to make the county delegations take part in the proceedings of Parliament.* On occasion of every conflict hitherto arising between the great lords and the Crown, endeavours had been made to seize the chief public offices and to turn to the account of the ruling faction the functions of government, as well as the right of granting the great fiefs. The party leaders of the opposition were not wanting in good intentions ; but the direct transfer of all powers held by the King to the coalition for the time being in the ascendant, rendered the exercise of moderation, in relation to adherents and opponents alike, wholly impracticable. In fact, the situation was such as constantly recurs during transitional times from absolutism to freedom. Hitherto all the prerogative rights of the State had seemed the outcome of a personal will. Ownership and privilege on the part of the ruling class, the situation of vassals and of towns, all normal and exceptional fashioning of superior rights (liberties, franchises), still depended on the personal mandates and grants of the King. Certain limitations of this power were no doubt indicated in Magna Charta ; but the legal provisions were still wanting that might ensure the carrying of the principle into practice by the respective authorities. Against the determining personal will of the King, neither the Court of King's Bench, nor the body of officials connected

with the Exchequer, afforded any effectual measure of protection. The discontented Barons were, in fact, unable to set any bounds to the wasting of the State revenues, or to the abuse of the Royal functions, without themselves exercising those very functions. Hence even while having recourse to the most expeditious remedies, the most skilled leaders were unable to restrain their adherents from the abuse of such power, an abuse which was at once detected both by the opposite faction and the lower orders, whom it naturally excited to resistance. The exercise of the State prerogatives was looked upon by the party in opposition as an assumption, while every refusal of a favour was deemed by the party followers as an offence affording a sufficient ground for deserting the common cause. Thus in the hands of the triumphant faction the royal prerogatives were perverted to the purposes of party government, and personal rule was followed by a violent counter rule.

The permanent beneficial outcome of these years of training was the growing conviction that the middle classes needed a fuller representation, as a mainstay of the royal prerogative against the Barons and Prelates, who had again become powerful and conscious of their power. Hence the assiduous attention of rulers was increasingly turned in this direction. The counties are invited to declare, through their representatives, their grounds of complaint against the Sheriffs. They are called upon to take their share in the assessment and the levying of the taxes. The "Mad Parliament" offers them the right of choosing their own Sheriffs. In the year 1258, they are directed to choose two

Knights (*vice omnium et singulorum*), as representatives of the shire, that these may "appear before the council" of the King in connection with the deliberations about the *auxilia*. The Report, "On the Dignity of a Peer," recognizes this incident (1258), as being the first authentic example of an endeavour to summon the delegation of the county as a corporate body. In 1261, Simon de Montfort and the King simultaneously summon three such Knights of the Shires to deliberate in common concerning matters of State, although the deliberation for the time remained inoperative. Not till January 20th, 1265, does the first precedent occur of a summoning of representatives of counties and of boroughs. At the same time the purpose of their participation was certainly expressed in sufficiently ambiguous terms (*nobiscum tractaturi et super præmissis auxilium impensuri*). Still less did it contain any recognition or assurance of the need of any such summons. In this respect they resembled the assemblies of nobles under Henry II., which were suspended for more than a generation by the simple expedient of issuing no fresh summonses. But even so the expediency of a further participation was thereby already proclaimed, and the House of Commons, in process of being constituted in the next ensuing period, is thus already foreshadowed in distinct outlines.

### III.

## Further Development of the "Estates" into Two Houses of Parliament.\*

#### TABLE OF KINGS.

EDWARD I., 1272-1307.	HENRY V., 1413-1422.
EDWARD II., 1307-1322.	HENRY VI., 1422-1461.
EDWARD III., 1321-1377.	EDWARD IV., 1461-1483.
RICHARD II., 1377-1399.	EDWARD V., 1483.
HENRY IV., 1399-1413.	RICHARD III., 1483-1485.

**A**LTHOUGH three generations had elapsed since the death of Henry II. harmonious relations had hitherto failed to be established between State and Society in England. The reign of John had made it

\* Among the data bearing on this period may be mentioned, in foremost line, the Statute-Rolls published as official documents, setting forth Resolutions of Parliament, from 6 Edw. I. to 8 Edw. IV. The next groundwork is found in "Parliamentary Rolls," reports of the Chancery officials concerning Proceedings in Parliament, now printed as "Rotuli Parliamentorum," vols. i.-iv. (1832). The proceedings of the Continual Council are edited by Sir H. Nicholas, "Proceedings of the Privy Council," 7 vols. (1834-1837), from 10 Richard II. to 38 Hen. VIII. Concerning judicial matters, Foss, "The Justices of England," 1848-1864, vols. iii. and iv. For constitutional history, Hallam, "Middle Ages," c. VIII., Lappenberg-Pauli, "Geschichte Englands," vols. iv., v. But most of all, W. Stubbs, "The Constitutional History," 1871, vols. ii. and iii., whose chief merit and successful labours are displayed in connection with this period.

evident that in its present phase of development, the nation would no longer endure a despotic rule. But the next ensuing generation had made it further evident that Magna Charta was not of itself a sufficient safeguard against absolutism, while the higher nobility alone, even by taking part in the public administration, showed itself incapable of redressing the balance of power. In the long protracted struggle both parties had unwittingly recurred to the like expedient of imparting strength and stability to the dawning parliamentary constitution by admitting the participation of the Commons (*Communitates*).

But the right form, which then, as now, could not be found amid the whirl of conflicting social interests, was destined to come from the loftier conceptions of the monarchy. After hard experience the conviction gained ground with the successor of Henry III., that the Crown must resolve on granting to the Commons a share in the administration, if the Crown itself was not to lose its own influence through the Committees of the Barons, as had happened under the inglorious rule of his father.

In that fluctuating fashion so peculiar to England, there begins with Edward I., at the close of a stormy century, an epoch of onward progress for the monarchy under Edward I., II., III. It opens under Edward I., the greatest English ruler since Alfred, and continues, with a short intermission under Edward II., to perfect the fundamental principles of parliamentary organization down to the death of Edward III. Just as when Anglo-Saxon rule was at full height, so in this century it is to the royal initiative that England owes the settled foundations of its free institutions, at that great period

so rife in creations, which Macaulay has depicted in such glowing terms:—"Then it was that the great English people was formed, that the national character began to exhibit those peculiarities which it has ever since retained, and that our fathers became emphatically islanders, islanders not merely in geographical position, but in their politics, their feelings, and their manners. Then first appeared, with distinctness, that Constitution which has ever since, through all changes, preserved its identity; that Constitution of which all the other free constitutions in the world are copies, and which, in spite of some defects, deserves to be regarded as the best under which any great Society has ever yet existed during many ages. Then it was that the House of Commons, the archetype of all the representative assemblies which now meet, either in the old or in the new world, held its first sittings. Then it was that the common law rose to the dignity of a science, and rapidly became a not unworthy rival of imperial jurisprudence. Then it was that the courage of those sailors who manned the rude barks of the Cinque Ports first made the flag of England terrible on the seas. Then it was that the most ancient colleges, which still exist at both the great national seats of learning, were founded. Then was formed that language, less musical, indeed, than those languages of the south, but in force, in richness, in aptitude for all the highest purposes of the poet, the philosopher, and the orator, inferior to the tongue of Greece alone. Then, too, appeared the first faint dawn of that noble literature, the most splendid and the most durable of the many glories of England."



Posterity may be better qualified distinctly to formulate the theory of the State system, whereas the men of the period were able to achieve its actual construction mainly through the experience derived from previous times. At the same time we recognize in this legislative process, as well as in Magna Charta itself, the co-operation of that well-trained body of officials which, since the peaceful close of the reign of Henry III., reverting to its normal activity, had completed the fabric of the Constitution with the materials already at hand. The essence of this structure consists in welding together all the administrative functions with the existing main elements of communal life, into that coherent system subsequently known as "self-government."

A certain cohesion between the Shires, smaller districts (Hundreds), and towns was already in being, thanks to the Anglo-Saxon judicial organization, to the reconciliation effected between the two nationalities, and to the incipient transformation of the Communal Courts into the jury-system.

On the other hand, the necessary unity in State government had already been realized through the vigorous development of the Royal prerogative, through the strict order observed in the Exchequer, through the various departments of the King's Court, and through the foreshadowings of a Privy Council, manifested subsequently to the reign of Henry III.

The defect lay in the imperfect union of the two organizations, which neither the control exercised by the Sheriffs and local bailiffs, nor the itinerant commissaries, were found sufficient to make good. In the previous period an endeavour had already been made

to remedy this defect by recurring to the co-operation of local committees, so far as actual necessity urged ; in other words, so far as the Norman official, who was virtually a stranger to the population at large, could conduct judicial inquiries on the spot only through sworn witnesses from the neighbourhood, through the "reeve and four men" from the villages, and through twelve men, as representing larger districts. In this way had been effected the surveys for Domesday, the determining of the Crown rights from time to time, the annually-recurring presentment of grievances, the new procedure for stating the points at issue in civil suits, the question of guilt in criminal cases, the assessment for military service, as well as the first experiments in assessments for a land-tax and income-tax. The essential point now was, to ensure the permanent and systematic fusion of these elements into the organized union of the central with the provincial, district, and town administration.

*A union of the military administration with the shire* had already been brought about through the official position of the *vice-comes* in reference to the summoning of the feudal militia, whose service, however, was now being daily more and more commuted by scutage. It was, in fact, being replaced by the county militia, which was thoroughly organized on a legal footing. The St. of Winchester, 13 Edw. I., c. 6, declares all *liberi homines*, from fifteen to sixty, bound to serve and bear arms. After the fashion of the Roman *comitia centuriata*, five grades of *liberi homines* are formed, having incomes of 15, 10, 5, 2 to 5, and under 2 pounds. The fusion of the two systems, constantly aimed at and

steadily progressing, was further stimulated by the policy now and in the following centuries pursued, of requiring all possessing a landed income of 20 pounds to accept knighthood, whether holding under feudal tenure or not. The troops destined for foreign service were now made up of both elements. The majority of the mounted forces still consisted of the feudal lords and their followers, under the designation of Barons, Knights, Esquires, and Men-at-arms. The foot-soldiers, on the other hand, generally from three to eight times more numerous, constituted companies, under "Constables," or "Centenaries," and were divided into pike-men and battle-axe-men, heavy and light bowmen, mainly selected from the county militia. Since the Act of Parliament, 25 Edw. III., which disallowed the employment of the county militia outside the kingdom, it was found expedient to provide such troops, partly through commissions for enrolling volunteers in the counties, partly also through engagement of mercenaries. The superior discipline and skill of the troops thus brought together generally proved victorious in the wars waged during one hundred years on French soil.

The organization of the *Courts of Law* became united with the county by means of the jury system, now completely carried into practice. At the close of the last period three principles had been established which were now made fundamental laws :—

Separation of the "finding" from the question of "fact."

The "finding" limited to the judges learned in the law.

Formation of local juries, nominated by a Crown official for the determination of "facts."

This separation of the question of "law" from the question of "fact," now formed the fundamental principle of English jurisprudence, after a manner different from the *judicium parium* intended by Magna Charta. After the thorough adoption of the system the need was felt of regulating the duties of the jury, for whom a restriction to the traditional men of law (Witan) seemed no longer suitable. For the "finding" there was doubtless needed the customary attendance at the Courts, which was practicable only in the case of larger ownerships. But for determining the question of "fact" nothing more was required than a thorough knowledge of the neighbourhood, and personal trustworthiness, for which the smaller freeholders were as suitable as they were indispensable. The participation in the "finding" might be regarded as an important political right, while any connection with the novel commissions for gathering proof appeared only to be a fresh and onerous service. The danger now lay rather in overburdening of the poorer class on the one hand, and on the other in the less trustworthy character of this element as being more open to bribery and intimidation. Hence arose the necessity of fixing, according to a new average, the value of property involving liability to serve on the jury, and in such wise that only freeholders of 20 shillings income from land should be summoned to the Assizes. By 21 Edw. I., sec. 1, and 2 Hen. V., c. 3, this rate was doubled; so that those only were to be summoned who possessed 40 shillings income (= one-tenth of the tax on a Knight's fief). Thus was also at the same time established the basis for right of election to the Lower House.

The *police administration* was placed in a new relation of harmony with the county through the office of justice of the peace. Chiefly during this period there was developed a comprehensive organization for the guarding of the peace (St. Winchester), combined with a system of control over industries, labour, luxury, and morals, corresponding with the subsequent police ordinances that prevailed in Germany. Its earlier development in England may be explained by the limited range of the manorial police and its restricted growth, as also by economic changes, especially the increase of the farm system of tenure, resulting in manifold contractual relations. But as soon as the "patriarchal" system was replaced by a legally constituted police administration, the management of this organization was necessarily based on a body of personally responsible officials invested with more summary powers. Even under Richard I., a first attempt was already made to associate with the Sheriff representatives of the district, who, in the *capitula* of 1194, were designated *custodes placitorum coronæ* (coroners). From that time forth renewed attempts were made to establish local commissaries, amid much contention concerning the manner of their nomination. The matter was frequently discussed with Parliament, which demanded an election from the body of large landowners, while the Crown held preferentially to a nomination from among legal experts. But meanwhile troubles had arisen with the labouring classes, which occasioned the Labourer's Act, 23 Edw. III., c. 1, and 25 Edw. III., c. 8. For the enforcement of these enactments new commissaries had to be named, who were to hold

their sessions four times yearly in each county. These police functionaries, nominated by the Crown, were found satisfactory,\* and in connection therewith, after many attempts at a permanent formation, there followed, in the year 1360, the establishment of district civil functionaries, as a lasting institution, 34 Edw. III., c. 1.

"In each county shall be named, for the keeping of the peace, a lord, and with him, three or four of the most reputable in the county, in common with some 'learned in the law,' and they shall have power to restrain the breakers of the law, inciters, and all other peace disturbers, and to pursue, lay hold of, and take in custody, and punish them with penalties, according to the law," etc.

Criminal penalties, in the strict sense of the term, they awarded only in their corporate capacity, at the quarter-sessions, conjointly with a jury. On the other hand, smaller offences against trade, morals, harbour regulations, were specially reserved by the tenour of the statutes, and under the continually-developing function of the justice of the peace were now ranged the old local civil officers as executive functionaries,

\* The dispute as to the election or nomination of Justices of the Peace has frequently been raised, but the claim to election has been definitely set aside. In the same way a claim to take part in the election of Sheriffs cropped up anew, and in the years 1300-11, had actually been accorded but was afterwards again abandoned. All social endeavours aim at the electing of judicial and police magistrates, because Society is not so much inclined to execute the will of the State as itself to exercise the functions of the State. The older German "Estates" and modern democracy are at one in these endeavours, and a prolonged political experience is needed to establish the conviction that the offices of judicial and police functions should not be elective.

who gradually obtained the designation of "Constables," owing to their duties in the militia.

The connection of the *financial administration* with the county was at first effected by means of the communal taxation system, which was now being established. At this period was formed a local tax (*town ley*), a Hundred and a County-rate, as well as an assessment through Boards, partly elected, partly appointed from the township and the Hundred, with power of adjustment and appeal through Boards of the Hundred and the County.

Meanwhile the time had arrived when the permanent employment of similar district commissions could no longer be deferred, even in connection with the government taxes. As complaints were incessant touching the arbitrary proceedings connected with the assessment of the *tallagia*, itinerant commissaries of the Exchequer, in lieu of the sheriff, were now empowered to treat of these matters with the Knights and the boroughs. But as the Assize-of-Arms (1181) introduced military duty, with fixed gradations based on property, Henry II. was unable to avoid employing, for this important new matter of business, a number of sworn Knights and men of law as local commissioners. As the levying of a Saladin tenth (1187), the collecting of the ransom money for Richard I., and the levying of a general land-tax under the same reign (1198), led to a new assessment by plough-land and income, practical reasons rendered the immediate establishment of Knights of the Shire and other functionaries absolutely indispensable. This system continued under Henry III., and in that century led

to the systematic formation of assessment commissions.

As soon as the county, taken as a whole, was thus fully constituted in respect of military, judicial, police, and fiscal matters, there followed the extension of the district system to a considerable number of *boroughs*, so that the organization of the municipalities presented the picture of a county on a small scale.

In regard to military matters, the boroughs remained thoroughly incorporated with the counties; only the city of London and a small number of towns received charters, constituting them counties by themselves, with a special urban organization in respect of the militia.

In judicial matters, a special "court leet" had already, in the preceding period, appeared as a main feature in the borough administration. To some towns there was also granted a civil jurisdiction after the new model of judge and jury. The police administration shows also, in the towns, a gradual expansion of the "court leet," through the justices of the peace, whose official duty was also extended to the special borough districts. From the time of Richard II., the new municipal charters also often included a separate commission of the peace, whose quarter-sessions become an ordinary criminal court, for which the borough submits its own jury-list.

According to this system, the number of boroughs was considerably increased. Under Edward I., fifty-four new ones are enumerated; under Edward II., sixteen; and under Edward III., twenty-eight; so that the number of important places enjoying a kind of



civic administration already exceeds 200 at the close of the Middle Ages.

On this foundation of county and local administration, the public business of the State was now distributed over the following departments:—

The ordinary jurisdiction was firmly fixed in established judicial bodies, as Courts of Law.

The conduct of the highest business of the kingdom was consolidated into a corporate Council of State, THE CONTINUAL COUNCIL.

The participation of the Prelates and Barons in the government of the kingdom obtained a settled shape, by means of a periodical summons to the King's Council, combined with which they constitute a MAGNUM CONCILIUM.

The participation of the Commons (*communitates*) took the form of a House of Commons.

But this development of the "Estates of the Realm" was limited to the temporal side, in contrast to which the constitution of the Church (part VI., further on) remained but slightly altered.

#### I.—THE THREE COURTS OF THE COMMON LAW

now constituted, relatively speaking, the strongest limitations of personal government in favour of personal liberty. The Court of King's Bench had already been, under Henry III., constituted as a permanently established Court of Law, in which the King still claims the right of personally presiding, as *Curia coram Rege ubicunque fuerimus in Anglia*. The Court of Common Pleas had gradually separated itself as a division for civil suits between private

persons. The Court of Exchequer, originally the division of the Treasury for disputed finance questions, was, in the course of this period, placed substantially on a level with the other two Courts of Law. The judges of the three courts now also undertook the conduct of the County Assizes. The higher judges constituted a learned body, paid out of the King's personal revenue, and subject to his personal disciplinary authority, which, as a powerful weapon to be exercised in case of a violation of duty, remains still in force notwithstanding their position as chief interpreters of the law of the land. "The common law reposes in the breast of the judges of the common law," that is to say, since the beginning of this period it is a judge-made law. Hand in hand therewith was combined the training of a special class of lawyers, and their thorough education in the corporate bodies, styled Inns of Court, and Chancery.

II.—A COUNCIL OF STATE, KNOWN AS THE "CONTINUAL COUNCIL," was constituted, when, at the beginning of the reign of Henry III., a Regency was found necessary. But when, in place of the Regency, Henry initiated his personal rule, in conjunction with his foreign favourites and a group of subordinate clerks, the Barons and Prelates demanded, on their part, the right of appointing to the higher offices "suitable persons," and after a vehement struggle they succeeded in getting matters into their own hands.

The PERMANENT COUNCIL, or Continual Council, now instituted under Edward I., side by side with the Exchequer and the Courts of Law, was the deliberate

creation of the Crown. It determined, as a joint body, questions relating to highest matters of State, and became the central point of the parliamentary system now in course of formation. It was composed of spiritual and temporal Peers, who, as permanent officials, controlled the highest military, judicial, financial, and ecclesiastical affairs, with the assistance of the superior judges and subordinate functionaries, and from that time forth it became the constitutional centre of the highest State-government. Mention already occurs under Edward I. of its various constituent members. In subsequent transactions with Parliament the five chief officials designated are the Chancellor, the Treasurer, the Keeper of the Privy-Seal, the Lord Chamberlain, and the Steward. These five were at that time evidently regarded as the controllers of current matters of business. The first extant records of the Council are those of the year 1384. The salaries of the members, together with some of the principal features of the order of procedure, were determined by parliamentary enactments in the years 1406, 1424, 1431. From the time of Henry VI. "Privy Council" gradually became the usual designation of this Council. During the Middle Ages, however, no "President" of the Council is mentioned, this office pertaining to the King himself, who would of course be free occasionally to entrust the conduct of business to one of its members.

### III.—PERIODICAL COUNCIL—MAGNUM CONCILIUM—

was now constituted as a Privy Council, enlarged by the addition of a number of Barons and Prelates. The endeavour made by Magna Charta to summon the

whole body of the Crown vassals as an "Estate of the Realm" had no doubt met with complete failure. Nevertheless Henry IV. had been reluctantly compelled to summon a select body of such Crown vassals, for the purpose of obtaining their assent to subsidies and advice upon all occasions of public emergency. But the summons, issued in an uncertain manner, and generally from a party point of view, had led to constant conflicts, and ended at last in a War with the Barons. Edward I. conferred on these assemblies the fixed shape of an enlarged "King's Council," summoned for the service of the Crown by writs addressed, from time to time, to the most prominent among the Barons. To this body the Crown now assigned, in a constitutional way, the functions which, since Magna Charta, had been irregularly exercised by the Crown vassals. These functions it exercised in its various capacities :

As the highest *judicial* body of the realm, taking the place of the shifting commissions, such as in the Norman period were usually formed from among the greater and inferior Crown vassals.

As a *financial* body, for the purpose of granting extraordinary aids, and for assessment of scutage-money.

As a *deliberative* body of the entire administration of the Realm. In this aspect the "Council" appears to be combined with the administrative *Concilium Continuum* in the respective relation of a more extended and of a more select Council.

As a *legislative* assembly in the place of the "Court-Days" and assemblies of notables, through which, in the preceding period, the so-called *Assisæ* were determined.

Thus since the reign of Edward I. the *Concilium* of the Prelates and Barons became a constitutional branch of the administration of the Realm, as a Council of State in which those summoned either as officials, ecclesiastical dignitaries, or landed proprietors took their place on a footing of equality. But by means of their complete and customary co-operation in the "*ardua negotia regni*," the result was obtained that the high nobility which, despite their oath of fealty, had for two centuries been the great peril and focus of resistance to the Crown, henceforth became the upholder of the throne, at least in normal times.

(1) *The position of the great Council as the highest Court of Law* comes most into prominence under Edward I., during whose reign Parliament was regarded chiefly as a judicial assembly, to which the other functions were attached. In this sense, under subsequent reigns, it is repeatedly promised that a Parliament shall be assembled "at least once a year." The competency of this legal tribunal was derived from the ancient right of the King "to draw to the Court" the most serious and important legal business. Current questions of law were no doubt referred to the ordinary Courts of Law and to the Assizes. But the Crown did not thereby at all abandon its original jurisdiction in extraordinary cases, and the "Estates" themselves were interested in maintaining this prerogative. Hence matters pertaining to civil and criminal jurisdiction may, on first and subsequent appeals, be brought before Parliament in a way that has procured for the English House of Lords its position as superior Court of Appeal, as Peers' Court, and High Criminal Court of State.

As Court of Appeal, the Great Council could try appeals in respect of wrong decisions in the Courts of Common Law. In fact, no higher authority could be found for revisions of such judgments in the lower Courts. By a rescript from the King (Writ of Error), the appeals in question might be addressed, for ultimate decision, to the *Magnum Concilium*, although these appeals were seldom allowed.

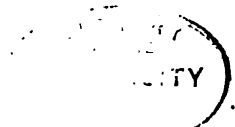
As Court of Peers, the Great Council might proceed in criminal suits even against the members of the Great Council itself. Hitherto it had been found impossible to give consistency to the claim for a special *judicium parium* in favour of the nobles, owing to the competition of hundreds of inferior Crown vassals. Now, however, that an established body with distinct positive limitations existed, the demand for such narrower circle was feasible, and could be the less deferred, the more the Great Council began to consult the judges of the courts only as advising members and assistants in its more important legal decisions. Hence the Great Council in regard to graver complaints against its members was called upon to pronounce judgment, and already in 15 Edw. II. the great lords pronounce sentence in official form, "Accordingly we, the Peers of the land, Earls and Barons, declare in presence of the King," and so forth. In 15 Edw. III. the Barons demanded that this principle shall be embodied as a fundamental law of the land, in consequence of which a statute was enacted, "That no Peer of the land, Crown official or other, on account of his office, can be brought before the court, condemned to the loss of his worldly possessions, put in arrest or prison, rendered responsible or judged

otherwise than through award of the Peers in Parliament." The inferior Crown vassals, not summoned to the Council of the Realm, ceased thereby to be *pares* in the judicial, and soon also in the political sense of the term.

Lastly, the attitude of the Great Council of State towards the high functionaries of the Realm was deduced from the fact that charges in respect of their office and dignity could not be entered before the judges of the Courts of Law, as mere Justices of the Royal Council. Such charges were referred as *placita* extraordinary to the "King in Council," in such cases the only competent tribunal which could impart the necessary weight to its decisions, although from early times stamping them with the character of strongly marked party bias.\*

(2) *Its position as a body charged with assenting to the imposing of taxes*, granting of scutage-money, and extraordinary aids, had been already established by

\* A certain vagueness in the limitation of this highest jurisdiction of the House of Lords remains, as a heritage from the long unrestricted prerogatives of the King. A degree of ambiguity also prevailed for some time longer in regard to legal procedure, as an inheritance from the Norman Judicial Commissions. Only by degrees has the procedure fashioned itself, by analogy, to the ordinary course in Criminal Courts, in such wise that the Lower House formulates its presentment in the character of a Grand Jury, and the Upper House sits in judgment as a Court of Law. According to a precedent under Henry IV., at times when the Great Council is not assembled, a Committee of Peers may be summoned for the purpose of pronouncing sentence, and on such occasions the Lord High Steward presides with great ceremonial. This was, in reality, a return to the ancient manner of judicial commissions. Only after the Revolution the rule followed under William III., that even in such cases all the Peers must be summoned.



the numerous precedents occurring under Henry III. Edward I. had, in this respect, confirmed the traditional usage that the Great Council, acting as a Committee of great Prelates and Barons, made such allowances in the name of the whole body of Crown vassals. But this right of assenting to the taxes assigned to the Council a position no longer open to question, and gave a permanent support to its other claims. This right, however, had soon to be shared with the representatives of the Commoners, who in this very department gradually gain a preponderance.

(3) *Its position as highest consultative body of the Realm* was also, subsequently to the reign of Henry III., dependent on the actual position, for the time being, of the State government and its immediate functions. In reference to decisions concerning war and peace, and in questions at issue with the Roman Curia, their assent was regularly asked for during the course of this period. But as in this respect the Great Council represented only a Privy Council with extended powers, the matters treated of were mainly the same as those of the State Council. Naturally the most important cases alone had to be reserved for the Great Assembly; but this did not exclude those of less consequence, and on account of this still rather wide range of business the assembly bears the designation of *Concilium Magnum*, and not *Parliamentum*. The periodical meeting of the Great Council assigned to the Barons a further influence, in the following directions:

First of all, in the examination and determination of petitions, in which respect whatever had to be carried out in the ordinary course of law and administration



passed through the hands of the Chancellor, of the Judges, and of the Privy Council. But where the amendment of a legislative enactment was concerned, or an extraordinary procedure, the Barons claimed to take part in the official reports, and in the decision touching petitions. In the stormy times of Edward II. this claim was enforced, although the method of procedure varied with the spirit of the administration. In conjunction with the ordinary jurisdiction exercised through the Courts of Law, the King had further reserved to himself, as inherited from the Norman Curia, an extraordinary jurisdiction in certain civil and criminal cases, which was exercised in the "Continual Council," and which for practical reasons could with difficulty be dispensed with. The range of this jurisdiction continued no doubt to be at all times contested. But after Prelates and Barons, as comprising the Great Council, found themselves also sharing its power, it was acknowledged, and occasionally even favoured by them, but in such measure that in the exercise of this jurisdiction the Barons often found themselves at variance with the Continual Council.

The endeavour to influence the appointment to the great offices of State manifested itself also at this period, and in difficult crises it sometimes happened that the King declared he would appoint such persons as were agreeable to the Great Council, while reserving his absolute right of nomination. On occasion of their periodical attendance at the Council, the claim advanced by the Prelates and Barons to fill up the vacant offices was tacitly acknowledged, and, under the House of Lancaster, became the established rule.

Not till the reign of Edward IV. were the Commoners again summoned to the Council as a matter of right.

During the minority of a King the *Magnum Concilium* naturally exercised a decisive influence on the forming of the Council of the Regency, as at the accession of Edward III., Richard II., and Henry VI. But even under independent sovereigns the Barons still repeatedly urged the establishment of a Privy Council, as under the indolent reign of Edward II. Still worse became the relations in consequence of the contested succession to the Throne under the weak-minded Henry VI., when party strife was again directed towards re-establishing the "Continual Council," ultimately degenerating into periodical wranglings over appointments, removals, and the impeachment of ministers.

(4) *Lastly, as a body empowered to advise in legislative matters*, the Great Council took the place of those baronial assemblies, jointly with whom a number of important ordinances were issued under Henry II. Without surrendering his right of issuing ordinances, Edward I. introduced a regular consultation with his *Magnum Concilium* in relation to all important legal measures. The deeply-rooted popular idea, that all changes in the *jus terræ* can only be effected *consensu meliorum terræ*, thus again entered into the heart of the nation, in which the individual consciousness of right was now at last thoroughly reawakened. As was formerly the case with the German territorial aristocracy, the position of *optimates terræ* fell of itself to the Prelates and Barons from the moment their threefold status became established, as the Supreme Court of Justice, the National Council, and controller of

the Crown taxes. Their dominating influence may also be recognized from the language employed in legal enactments, in which under Edward I. and II. French, as the current speech of the upper classes, began to thrust aside the Latin official tongue. The more legislation became the chief province of the baronial assembly, the more was developed a modified phraseology, which by the term "*Parliamentum*" meant chiefly the Law-giving functions of the Assembly ; by "*Council*" its co-operation as the State Council ; by "*Curia*" its decisions as Supreme Law Court.

The summoning of its members from among a select body of Prelates and Crown vassals had been shadowed forth, at least in broad outlines, by precedents continually arising down to the close of the reign of Henry III. But the War of the Barons had clearly shown whither the nation might be led by the Convocation of such an assembly on party lines. The efforts of Edward I. were undoubtedly directed towards the erection of a complete and efficient National Council, whose fundamental elements were still to be the Crown vassals, with a view to the judicial functions and passing of the supplies. But for the Parliament in its character as an enlarged Privy Council, personal experience in war and statecraft was a consideration of primary importance ; and from this point of view there could be no objection to summoning men not possessing Crown fiefs, and belonging even to alien families, as in fact happened in a few cases (Beaumont, Grandison, and others). The researches of Sir H. Nicholas prove, for instance, that in the year 1399, among forty-five Barons summoned for the first time,

twenty-four were not possessed of Crown fiefs. At any rate, the summoning to the Great Council remained so far a function of the royal prerogative, that, down to the end of the Middle Ages, no instance occurs of the Barons having refused to accept in their midst any member summoned by the King.

In accordance with this point of view, there were summoned to the Great Council the three groups of the spiritual Lords, the Lords temporal, and the members of the Continual Council.

In the group of the *spiritual lords* appear the two Archbishops and sixteen Bishops, regularly summoned in their twofold capacity as heads of the Church, and as great vassals. The number of Abbots fluctuated for a long time, according to the purposes of the summons, but their attendance was numerous especially where a grant of "aids" was concerned. Many, however, deprecated the costly honour, and made good the plea, that they did not possess war fiefs, and therefore were not bound to legal service in the *Curia*. Under Edward III. this ground of excuse was repeatedly admitted, and thenceforward the number of Abbots was somewhat constantly fixed at about twenty-five, to whom were added a few priors and heads of monastic orders. Down to the time of the Reformation in England, as well as in Germany, the number of spiritual members was usually greater, often doubly as great, as the temporal.

In the group of *temporal lords* the Earls form the acknowledged heads of the body of Crown vassals. So also the holders of the great Court offices were amongst the permanent section. The limitation is vague as to

the unclassed Crown vassals, who were now generally designated as Barons, although the common application of this term, specially to the military vassals, still held good. Owing to the great importance which the granting of supplies had acquired during the two last generations, the financial department was now undoubtedly the most prominent. Some preference was no doubt obviously shown to the great territorial lords, who, on change of ownership, were burdened with the great "Relief" of 100 marks, that is, thirteen and a half times as high as the simple Knight's fief. Side by side with this nucleus, there appears double the number, or even more, of the inferior Crown vassals, or lords having no military fief, who were invited either in virtue of important offices of trust under the Crown, or in consideration of services rendered in war, or in the Courts of Law. Owing to this discretionary exercise of authority, the summonses under Edward I. differ as widely as from 40 to 111; under Edward II. from 38 to 123; under Edward III. from 24 to 96; under Richard II. from 24 to 48; under Henry IV. from 24 to 37; under Henry V. from 20 to 32; under Henry VI. from 15 to 42; and under Edward IV. from 23 to 37. In the century of the three Edwards the change was still so frequent that ninety-eight lords were summoned once only, others not more than two or three times. To others, again, the summons was addressed for life, but did not include their heirs. How greatly the question of assent to the taxes influenced invitations may be inferred from the fact that the husbands of heiresses were usually summoned, as well as the owners of larger part holdings. Sometimes

even women were summoned ; and in 35 and 36 Edward III. two exceptional cases occur, where seven countesses and three baronesses are summoned, with the requirement that they shall have themselves represented by men of confidence, with a view to passing the supplies. This innovation becomes less striking, when it is mentioned that in mediæval times there is never any question of a counting of votes.

Lastly, the third element of the *Magnum Concilium* was formed of the members of the "Continual Council," who, as such, from the outset had seat and voice in the Great Council. But the combined influence of the great Prelates and Barons, and their importance as contributors to the taxes, undoubtedly soon made itself felt in the National Council, as a far more important factor than that of the mere official element. From the time that the members of the Great Council acted as "Peers of the Realm," it became more and more the custom to summon, "with the rest of the Peers" (*cum cæteris*), such members of the State Council as were also Peers in their own right, as this already enhanced their higher political and social position. The association of these Peers to the Privy Council became gradually merged in the more highly esteemed membership in the *Magnum Concilium*. In its functions as an advising and legislative body alone does the Privy Council appear to have for some time longer continued to maintain its position as a *concilium in consilio*, as Lord Hale describes it. The matters for deliberation were drafted in the select committee ; the proceedings were conducted by the officials of the Council ; all

resolutions are drawn up in writing by the officials of the Council ; and all ordinances in Council are afterwards digested. The sittings took place in the Council-chamber of the King's palace, the attendants from the King's household being commanded thereto, as nowadays. But their position as mere assistants of the Upper House had already been determined before the close of this period.

Within this process of development the *hereditary quality of the temporal peerage* gradually took shape. Numerous analogies tend to show that the legal conception of an hereditary nobility is usually matured after some six generations of legally recognized fixed ownership in land. In England also this same process of "natural selection" was very slowly evolved. In war and the Council-chamber alike the great barons had, both personally and as a class, long become a dominant element, which now progressively acquired an assured position through their functions in the National Council. These yearly gatherings for the normal treatment of weighty public affairs imparted to them the prestige and the personal qualities which are fostered by the feeling of hereditary membership. Their higher political status had its root now also both in their local position as skilful captains of the county militia, and as heads of the civil administration of the shire. At all times such relations became collectively developed in connection with property, and in accordance with the now legally established course of inheritance, the whole range of these customary functions became transmitted to the first-born son, or next heir, and to him alone. The most important

step towards a legal determination of their position was the acknowledgment of a qualified Peers' Court in the fifteenth century, under Edward III. After a century of hard striving, an "Estate of the Realm" (*parcs regni*), as distinct from the inferior Crown vassals, at last succeeded in obtaining legal recognition. A second turning-point occurred in connection with the usurpation of the Throne by the House of Lancaster, which was compelled to look for its support, in the first instance, in the recognition of the Peers of the Realm as now constituted. Such support could, in fact, be found only in a traditionally-established body, and not in a mere group of adherents arbitrarily summoned for the purpose. From that time the Council of Prelates and Barons continued to acquire greater consistency in every direction. The number of the summonses became smaller but more constant, in conformity with the natural tendencies of a privileged class. The section consisting of members invited merely on grounds of personal confidence fell more and more into the background. Without calling in question the right of the King to summon new members, it tacitly took the form of a permanent addition to a permanent body.

For this constitution, however, of a nobility by birth, the hitherto prevailing form of summons by writ, issued once for all, could no longer suffice. Just as little could this hereditary aristocracy, now in process of development, be confined to definite estates and territorial demesnes, both in consequence of the alienability of fiefs in England, and further, because thereby the right of the King's summons would have become



restricted, which was contemplated by no party in the State. The only new legal form whereby an hereditary Estate of the Realm could come into effect was through royal "Patent" or "Charter." Since the Conquest, the only higher title of nobility, namely, that of Earl, was founded on Patent. Since Edward III., the dignity of Duke also was created by Patent; since Richard II., that of Marquis, and later on that of Viscount. The dignity of Duke, granted in 10 Edward III., to Princes of the King's family, was also only a transient creation, inasmuch as those Princes did not possess any Crown fiefs at all. After the precedent of these titles of nobility, in 11 Richard II., for the first time, John de Beauchamp of Holt, Crown vassal, was, in consideration of his merits and of his noble birth, appointed "Lord Beauchamp, Baron of Kidderminster, to himself and heirs male of his body, with all rights of a Baron." The hitherto ambiguous term "Baron" was thus recognized as an hereditary title of nobility, like the higher titles already in use. Much as this first creation ran counter to the wishes of the great lords, it became decisive in regard to the hereditary position of the Peerage. The Crown vassals, who had hitherto been summoned by Writ, were thereby placed in a new position. As now these royal favourites, the newly-created Barons, laid claim to belong to an hereditary Estate of the Realm, a like claim could no longer be withheld from the more ancient and more distinguished Barons, summoned according to usual custom. In the fifteenth century there thus existed two simultaneous modes of summoning to the Council of the Realm.

One was by Patent or Charter, for Dukes, Earls, Marquises, Viscounts, and patented Barons, recognized in the Patent itself as having the hereditary right. Since the reign of Henry VI. this was more and more regarded as the customary mode.\*

The other was by Writ, for Barons without Patents according to custom, such custom being in the fifteenth century hereditary in the case of the more ancient and distinguished, but not for others. The mere personal summons which under the House of Lancaster had already become rare, ceased altogether under the Tudors, and in the reign of Elizabeth the Courts had already arrived at the conclusion that the more ancient and traditional mode of summons by Writ was to be regarded as involving hereditary right. In 20 Henry VI. the legal position of the Peers was extended by the Upper House to wives and widows and women, but not beyond, in accordance with the personal conception attaching to nobility.

This establishing of an hereditary nobility was achieved only at heavy cost, but on that very account it now ranks amongst the most durable of the institutions.

To the Great Council of the Realm thus constituted was now superadded

✓ IV.—THE NEW SHARE OF THE COMMONERS IN PARLIAMENT.

In conjunction with the assemblies of Prelates and Barons charged with matters relating to law, taxes, and other subjects, Edward I. repeatedly summoned

\* Regular creation by "Patent" dates from 24 Hen. VI., but for special cases the summoning by Writ was still in use. In 22 Edw. II., for the first time, the son of a Duke or Earl begins to be summoned during the lifetime of his father, and under title

deputations from the *Communitates*, without formally binding himself to the irregular proceedings that took place during the War of the Barons (49 Henry III.).

In the course of his undertakings the King found urgent occasion for appealing to his faithful *Communitates* "to bear common dangers with common exertions," and to take counsel with the King for the extraordinary supplies of war and money. Such a summons is clearly established for the first time in 10 Edward I., November 24th, 1282, when, after the reduction of Wales, four Knights out of each Shire, and two Burgesses from various towns, are summoned with the injunction: "to hear and to do such things as are to be placed before them, on the part of the King;" thirty-two counties are to send their deputies to Northampton, but the five northern counties to send them to York. In the following year, September 1283, there were enjoined to appear at the Parliament at Shrewsbury no less than one hundred and ten Earls and Barons, two Knights out of each Shire, and two Burgesses out of twenty-one towns, to advise about the affairs of the conquered land of Wales. In the following year no mention occurs of the *Commune*, and in 16 Edward I., the Barons having refused a subsidy, the Treasurer made a summary demand for a *tallagium* from towns and demesnes. In 18 Edward I., the Sheriffs are required to send two or three Knights, "with full powers for themselves and the *Communitates*,"

of a second Peerage. But such a summoning of the son, side by side with the father, was regarded only as a personal honour, *ad interim*; such a Peerage merges in the principal Peerage when this falls vacant, and does not establish any hereditary dignity.

to advise upon, and assent to, the resolutions of the Earls and Barons. The towns were not summoned on this occasion, as the main object of deliberation concerned a Law for the alienation of fiefs. But in 23 Edward I. (30th April, 1295), "in grave needs, on account of war" two Knights were summoned out of each Shire, and two Burgesses each out of no less than one hundred and fifteen cities and boroughs, "that to do which by the *Commune Concilium* shall be resolved," whereupon followed a considerable grant of aid-money. After this great Parliament at Westminster, at which two hundred delegates already appeared from towns, the summonses to the counties, together with delegates from towns, was again occasionally repeated during the same reign.

No official records had hitherto recognized the necessity for any such summons. But what had once been done in disorderly times under Henry III. was recurred to again by a wise ruler, who therein recognized a political necessity. He wished to consult the delegates of the counties and towns, and obtain their assent to certain matters, so that they might the more willingly grant him aid and subsidies. In accordance with this view the summonses were for a long time of a very discretionary character, the number of towns especially varying considerably. The deputies were still wont to receive special instructions, and at deliberations on the matter of subsidies they appeared mostly by twos from each *communitas*, so as to control each other. Their desires and petitions were generally received by the King at the opening of the proceedings, at the close dismissing them with his thanks, and with injunction to be ready whenever summoned anew.

In the last year of the reign of Edward I. they are for the first time jointly mentioned in the preamble of a resolution, bearing on a matter of law. Thenceforth their importance slowly increased, like the development of the hereditary peerage itself, hand in hand with their growing prominence in connection with the public service and taxation. Precisely on that account, and also because these class privileges were harmoniously associated with their services to the State, the Lower House was not, like that of the Peers, associated with the judicial branch of the royal prerogative, but obtained in somewhat reverse order a share

First in the department of public taxation ;

Then in the internal administration by way of petition ;

Lastly, in the legislative department.

(1) *The assent to taxes* on the part of shires and towns formed, in the earlier period, unquestionably the main object for which the Commoners were summoned. For two generations it had become evident that the ordinary revenues of the King did not suffice for the requirements of the State, and that there was needed from time to time a supplement, through taxes, by way of extraordinary revenue. For over two generations it was equally evident that such subsidies should be raised, not only through "aids" and "scutages" from Crown vassals, but that, in corresponding measure, the towns, freeholders, and farmers on domain-lands should contribute, through their *tallagia*, or through *carucagia* (the plough land = *carucata*, one hundred acres), and further, that movable property should also help with some fractional part of its income (a tenth, fifteenth, etc.). The time had now arrived when these assessments

might respectively be constituted into a general land and income-tax.

The way had been prepared for the merging of all special taxes raised on landed property into one general land-tax, by a uniform tax on plough-lands, on occasion of the Saladin-tenth (1188), on the ransoming of Richard I. from captivity by the *carucagium* of 1194, and again several times under Henry III. It was no easy matter, however, to render this mode of taxation acceptable to the Crown vassals, since the "*auxilia*" from feudal vassals were traditionally allowed only in three determined cases of "Honour and Need." But an appeal might well be successfully addressed to the patriotism of the highest Council of the Realm, without waiting for any such cases of necessity in the person of their feudal lord, since a manifest need of the country was of as great moment as the cases of "Honour and Need" personal to the sovereign. The military vassals were further assessed according to the terms of the fiefs in an equal amount (£20, and later £15), while the hydage of the common lands was estimated by the fiscal commissions of the Shires according to the measure of plough-land, and later according to the actual returns. It was certainly in accordance with the custom of landed property to maintain unchanged the imposts as fixed once for all, while it was equally repugnant to the sense of honour of the Crown vassals to submit to be taxed by the Communal Committees. But upon the whole, the assessment on the actual value of the plough-land was still doubtless more to the interest of the Knight's fiefs. It was rendered still more acceptable, when the Knight's fief, in respect of its heavy

feudal burdens, was reduced to a lower figure, the sense of honour being duly respected by the expedient of appointing the Assessment Commission from among the Knights themselves. By these measures the establishment of a uniform land-tax was effected from the time of Edward III.

A supplementary tax levied on movables (personal property) had already long been well grounded, through the royal claim to *tallagia* from peasants on domain-lands, and from towns. But it was to the urgent interest of those liable to pay dues, that the amount should not be determined as heretofore by means of Commissaries of Court, in conjunction with the several County Assemblies, but uniformly settled by proceedings in Parliament itself. To the original unrestricted and arbitrary dealings of the Treasury were now already opposed innumerable exemptions and abatements, secured by purchase. On the other hand, the income of the towns had, through trade and industry, increased so abundantly, that they had, jointly with the land-tax, grown to be a considerable source of taxation. However undeveloped may have been the economic notions of the Middle Ages, yet even then it had already been recognized that, side by side with the taxations of objects affected to personal use, there should exist a proportionate personal rating, in other words, on the entire income of the individual. At the levying of the Saladin-tenth, and on occasion of the ransom of Richard I., this tax on personal property had come into use, and John had, after his way, extended it to the whole population. Under Henry III. it had frequently been applied, but with

exemption of the clergy, and abatement in favour of Crown vassals. With these reservations the income-tax seemed suited to accompany and serve as a supplement to the land-tax, such as, in fact, it became from the time of Edward III. ; and very soon again with fixed arrangements for shires and towns.

The extension of the land and income-tax to the clergy was already so far carried out in the antecedent period, that Prelates paid "aids" and scutage-money on account of their Crown fiefs, and, in common with the temporal Crown vassals, submitted to demands made in respect of these fiefs. On the other hand, the clergy resisted the taxing of their other revenues resulting from such sources as the common lands, tithes, offerings, fees for clerical functions, and so forth. Meantime, however, the Papal government had accustomed the clergy to a heavy charge upon their combined incomes, and had assessed the revenues of the wealthy English Church on the most heavy scale. But now that a general income-tax had been established for the laity, the time soon arrived when the clergy, inspired by a lofty sentiment of patriotism, felt that if an income-tax had to be paid at all, it would be better to pay it to the King for the welfare of the land than to the Roman Pontiff. In fact, it was soon seen that, when called upon to contribute to the State revenues, the clergy offered no serious opposition, provided the Crown honourably bided by the understanding that they were to be taxed on terms determined by specially appointed Commissioners, and on special arrangements and at the lowest possible fixed rate. This last condition was fully complied with during the present period.



On the other hand, the levying of Custom dues and charges on articles of consumption was in many respects controlled by the civil authority of the King, and of his office as "Arbiter of Commerce" to regulate the traffic of Harbours and Markets. This often led to seizures, and to compromises with foreign and native merchants, while, as was gradually seen, the appraisements forced on the traders fell ultimately on the consumers. The conviction was slowly arrived at, that the levying of such imposts could not be severed from the assent to the direct taxes.

This was the position of the taxing interests throughout the land when, under Edward I., a stormy crisis happened, comparable with the course of events connected with Magna Charta, but with the substantial difference that, on occasion of the resistance offered to the great King, both sides acted loyally, and with full trust in their mutual loyalty. Edward had begun his reign under pressing financial difficulties, resulting from his father's bad administration, a state of things made much worse by his own frequent wars. The brilliant achievements of his reign doubtless placed him in a position to appeal successfully to the sense of patriotism of his Prelates, Barons, and Commoners, who, as a rule, responded to his heavy requirements. But in the year 1294, pressed by the course of the war on the Continent, and by obligations contracted towards his allies, he had recourse to arbitrary measures. He demanded from the clergy no less than one-half of their incomes, after long deliberations contenting himself next year with a more moderate assessment, as also with one-twelfth from Barons and Knights, and one-seventh from towns.

But when in the year following the need of money became still more urgent, Boniface VIII., through the Bull "*Clericis laicos*," intervened with an absolute injunction against levying any tax on Church revenues, which Edward met by seizing the possessions of the Archbishop's See, and declaring the whole clergy "out of his protection." In this strained state of affairs the Grand Constable and the Marshal of the feudal army, acting in accord with the feeling of the Crown vassals, refused their services for a campaign into Gascony. Both withdrew, after a violent dispute, and prepared for armed resistance. In his sore need, Edward now resorted to a seizure of wool belonging to the merchants, to a demand of heavy payment in kind from the shires, and thereafter to a call-to-arms of the whole feudal militia, and of all other owners possessing £20 incomes. Thereupon the mass of the people was naturally driven to open resistance with the clergy under ban, the barons in arms, while the two great functionaries again refused allegiance to their feudal lord, and withdrew from the army. Nevertheless the King still succeeded, through personal intervention, in obtaining one-eighth from the Barons and Knights, one-fifth from the towns, and a proportionate amount from the clergy, with whom the amicable relations were renewed. In this perilous state of affairs (August 12th, 1297) the King was obliged to join his army on the Continent, leaving his son with a Council of Regency, which soon found itself compelled to treat with the malcontent Earls and a strongly-armed body of troops. Their claims aimed at the renewal and supplementing of Magna Charta by a clause relating to a "general" right of

concurrence, on the part of the "Estates" (*communitas*), to assent as regards all taxes. The Prince Regent, on advice of his Council, signed the proposal made to him (October 12th, 1297). In consideration of the situation at home and abroad, Edward ratified these proceedings in a charter from Ghent (November 5th, 1297), and with the expressed resolve to keep his royal word. This *Confirmatio Chartarum*, in French and Latin text, represents, in fact, a fundamental law comparable with Magna Charta, and to the credit of the Crown in contrast with the events of 1215. The French text, comprised in the Statutes of the Realm (I., 124, 125), is the authentic one actually ratified by the King. The less complete Latin text is apparently the preliminary one concluded between the Prince Regent and the Council, but which has subsequently been erroneously cited in law cases as a separate *statutum de tallagio non concedendo*. The amendments added by Edward before appending his signature, and especially the addition "with reservation of the old aid-money" (*sauf les anciennes aides et prises dues et costumes*), have, of course, a certain amount of weight. The main point, however, was that the right constantly contended for since Magna Charta in 1215 of signifying an assent to the taxes, had after the lapse of a century been at last achieved, and this on the broad footing of the land-owning classes, which in fact pay them.\*

\* The chief modification which Edward I. introduced at the signing of the Charter of Ghent consists in this, that instead of the assurance "nullum auxilium levetur sine voluntate et consensu episcoporum, baronum, militum, burgensium et aliorum liberorum hominum in regno nostro," there is inserted: "Barons et toute la communauté de la terre." Dr. Riess, "Geschichte

These several tax-paying groups (Prelates, Barons, Communes) continued for some time longer to signify their assent separately. But from the time of Edward II. the endeavour is already apparent to bring the direct taxation into accordance with occasion and amount. When this was required it became necessary to take counsel in common: the King as representing his domain-lands; the Barons their manors and towns under protection; the clergy for their possessions;

des Wahlrechts zum Englischen Parliamente," 1885, p. 10, infers from this that the assurance of the right of assent to the taxes is granted only to the Prelates and Crown vassals, for, according to the form of speech till then current, under the term "*communauté*," were, as a rule, understood only the Crown vassals. "To the House of Commons nothing was granted." But such an equivocal mode of expression is opposed to the clearly-expressed intentions of the petitioners, and is alien to the character of Edward I., who never abused the release from his oath, subsequently granted by Papal dispensation in respect of the Charta. The omission of the words *militum et liberorum*, etc., may be easily explained by the fact that a representation of the counties and towns had only begun a short time previously, and had not as yet assumed a distinct shape. The King did not want to have his hands bound by the enumeration of the *milites burgenses liberi homines*, in respect of any future summons. From such enumeration the most far-reaching consequences might have been drawn, in view of which Art. XII. XIV. of Magna Charta were also omitted. If during necessitous times taxes were imposed without consent, this arose only from the conception of a dictatorial prerogative existing in cases of need which was still regarded as part of the Royal prerogative. (*Vide infra*, p. 183.) Characteristic in this particular is the assurance in 51 Edw. III. : "That the King was not willing to lay any burden on the people without concurrence of the Commons, save in cases of great necessity, and for defence of the Realm, and when he could with full right do it." Such a reservation of right, down to the end of the Middle Ages, all concessions were understood to comprise. The further reservation of the traditional aides, prises, costumes, was based on the ground that the King did not wish to relinquish his old Treasury-rights over the settlers on his domain-lands, and over the tolls traditionally fixed (*custuma antiqua*), those namely on wool, hides, and leather.

the Knights for themselves and their freemen ; and the towns for their *communitates*. Understanding each their individual interest, they were thus, by degrees, brought together : first, Knights and Towns, next Commons and Lords ; afterwards, all the constituent parts of Parliament, whereby the process of granting supplies assumed a form similar to that of the legislative function. In 1378 the new relation was so far settled, that a *magnum Concilium* of Prelates and Barons pronounced itself absolutely incompetent to give any assent to taxes without the Commoners.

When money was needed in later reigns, attempts were made from time to time to evade the accepted principle by reverting to the older special prerogative. But as the Lords, Knights, and towns held together, such attempts failed, and at the close of the period there followed a renewed assurance on the part of Richard III. But for the spirit of this assent to taxation of great moment was Edward I.'s expression, declaring that the rejected imposts were "for the common profit of the realm." He thereby surrendered a portion of his personal prerogative, and found himself compelled to substitute a land-tax, against which a number of objections were set aside, leaving, however, a claim on behalf of the "estates" to the right of inquiring into purposes and means. Nor was the contractual nature of the resolutions concerning such extraordinary Crown revenues thereby abandoned. The resolutions bearing on taxation had by no means assumed the normal shape of the resolutions bearing on law. They received no formal assent on the part of the King, but were rather addressed to him in the shape

of a formal document, which was afterwards embodied in the minutes of Parliament. The last instance of separate assent to taxes is in 18 Edward III. In later Reports both Houses are jointly mentioned, often with the observation "that they have advised in common." The old designations applied to taxes, *auxilia*, *scutagia*, *hydagia*, *tallagia*, were for some time longer mentioned side by side. The interests of the various tax-payers still clashed in many ways, so that essays continued long to be made at experimental taxation. The land-owners more especially consulted their own interests, by endeavouring from time to time to ease their heavy burdens by payments in kind, by a poll-tax, taxation according to parishes, and by a progressive income-tax. But all these variations \* remained little more than passing essays, as compared with the firm basis found in the obligation of Knights' fiefs to contribute.

All the charges falling upon land were at last united into one general land-tax ;

All personal charges into a uniform income-tax ;

And all Customs and other duties on goods into a general tariff, in such wise that the latter became a lasting source of revenue to the Crown, which from the reign of Henry V. was assured for his life to the King, by way of compensation for the diminishing revenues from the domain-lands. For a long time afterwards

\* A clear survey of these transient experiments at taxation is conveyed by Stubbs II., c. 17, pp. 518-31. In all this one detects a desire on the part of the landowners to relieve their supposed over-burdened position by a system of general taxation. But the Poll-tax levied by the nobles exercising power under Richard II. gave occasion to the great uprising of the peasantry in that reign.

the chief group of these indirect taxes was lumped together under the designation of "tonnage" and "poundage."

(2) *The share of the Commoners in the current administration of the State* was developed under the guise of "petitions," public grievances, motions, and complaints, just as in German assemblies the *gravamina* of the land formed a main part of their proceedings.

The decision in regard to petitions and grievances lay no doubt within the province of the King's Council and the Great Council ; they were taken in hand by "receivers," and reported on by "triers" and "auditors," and assigned to their respective departments. Nevertheless it was an important right of the county communities and towns to bring their numerous and often but too-well-grounded grievances before the highest officers of the Crown, and to the cognizance of the Prelates and Barons.

The first appearance of the Commoners is certainly modest enough, "Vos humbles, pauvres communs prient et supplient pour Dieu et en œuvre de charité," being the wonted formula. So far as concerned their petitions, the King's Council was practically the ruling power ; to the King pertained the judicial authority, the granting of new legal remedies, and the redress of grievances, whether on the ground of law or equity. With every new generation, however, the proposals of the Commoners assumed greater weight in conjunction with the growing importance of their property and capacity for taxation. According to a celebrated saying of Delolme's, the assent to taxes, in constant connection with the grievances, was so effective, "that proposals made in such opportune

company seldom failed to find ready acceptance." Proceeding even further, the Commoners already began to demand cognizance of petitions coming from all quarters. In 12 Edward III. a share in the nomination of the "reporters" was conceded to them, although in this respect practice varied considerably. Under Richard II. the "humbles, pauvres communs" are, according to occasion, already styled "right wise, right honourable, and discreet Commoners." In the fifteenth century country petitioners prefer addressing their petitions to the "right honourable House of Commons" itself. The answer then usually followed at the close of the proceedings, consequently after the supplies had been passed. The attempts made to reverse this order were at first set aside, but at last this point also was yielded in cases of emergency.

It also soon became very difficult to separate the granting of subsidies from the right of inquiring how previous grants had been appropriated. A claim in this direction was first manifested at the beginning of the reign of Richard II. It was granted on one occasion, under reserve against its becoming a precedent, and in hard times repeatedly conceded, without, however, leading to a systematic auditing of the accounts. The conflict on this score led by degrees to the practice of postponing the granting of supplies as far as possible to the last day of the session.

✓ After the growing influence of the Commoners began to make itself felt, their advice was often asked for by the Crown, even in respect of general matters of State. This was frequently given with reluctance by



the Commons, who foresaw a demand for money, as a consequence of any "advising" of theirs. In 28 Edward III. they declare, in a matter of a treaty of peace submitted to them, "what to the King and France shall also be agreeable to them." In Richard II. they refuse to give their opinion at all as to war and peace, declaring however, after much pressure, that they are more for peace.

A direct interference on the part of the Commons as to the nomination of the great dignitaries of the Crown, and as to the direction of the Government, scarcely occurs except as the expression of a revolutionary feeling, and in the House of Lords always under the sway of party feeling. In 15 Edward III. there certainly occurs an extravagant petition, which aims at the nomination of the Judges and of Ministers in the Parliament, and which is substantially granted under protest of the King's Council. But through proclamations addressed to the Sheriffs the King declared, after the close of Parliament, that this statute was null and void, as having been forced upon him, and two years later Parliament itself consented to its formal repeal. On the occasion of the violent end of the reign of Edward II., and again at the accession of Richard II., the Commons were incited to make exorbitant demands, both by the personal incapacity of the King, and by reason of the members of the King's family grouped round the throne. Under Henry IV. it was the usurpation of the throne which combined with the rapidly following unpopularity of the King, conducing to those excessive demands, all of which, however, were again withdrawn under the same reign.

Somewhat different was their behaviour under the government of the Regency during the minority and mental incapacity of the King, which, in the absence of any fixed law relating to such cases, centred in the Great Council, with a certain co-operation, however, on the part of the Commoners, dependent to some extent on the relations of power and party influence about the Court. In other respects all direct interference of the Commoners with the State functionaries and course of government usually ended unfavourably, and had soon to be disavowed.

On the other hand, of great account became the application of the Commoners' right of petition, to "presentments" against leading State officials. In Norman times the prosecution of an offence was associated with the maintenance of the peace, as a common duty, out of which grew a right of presentment on the part of the community. As the *Communitates* of the Shire made their "presentments" as public complaints, while since Edward III. the Grand Jury had been the regular medium for such complaints, it followed that a right of complaint could not be consistently withheld from the *Communitates* united in Parliament. As a *Communitas regni* they first begin to exercise this right 51 Edward III., 1376. This occurred at a time of great malpractices in the administration under a King enfeebled from old age. But under Richard II. the impeachments became mainly violent party struggles, and from that time begin the great State trials, leading to sentences of death and banishment, and, on a change of parties, to retaliation. It would appear that under manifold modifications the complaint of the Lower

House, in the form of a presentment of a Grand Jury, should be regarded as the regular mode of procedure. The powerful position of such a complaint, and the high position of the person impeached, naturally made these cases matter of reservation to the highest jurisdiction. Hence they were referred to the King in the Great Council ; that is, to the Upper House, as a High Court of Law. In accordance with the principle underlying the complaint, the Commons at the same time claimed that sentences should be pronounced only when they themselves brought forward a motion to that effect. The reigns of Henry IV. and V. gave no occasion for any such exceptional proceedings. But under Henry VI. "presentments" were renewed, and in the trial of the Earl of Suffolk assume for the first time the shape of a legislative act, under the designation "Bill of Attainder," which dispenses with the traditional form of a judicial hearing. The Commons had not, however, yet laid any claim to a share in the judicial business of the Council, and of the Great Council of that time.

(3) Lastly, *the share of the Commons in legislation* originated from the development of their right of petition. In cases where, for redress of a grievance, a new ordinance became necessary, this had hitherto been issued constitutionally by the King in Council, and since Edward I. in more important cases, with the assent of the Prelates and Barons in the Great Council. There was no question as yet of any concurrence of the Commons, although the motion itself already involved their declared assent in the resolution to be passed. The increasing authority of the Commons gradually

conferred such a value on this virtual approval, that a formal mention of their "consent" began to be made, as happened once at the close of the reign of Edward I., and repeatedly under Edward II. The turning-point is found in the long reign of Edward III., beset with money difficulties, which compelled him to summon full Parliaments no less than seventy times. The Commons, which till then had only been occasionally mentioned in the parliamentary resolutions, were now seldom left out, their co-operation being referred to even in the preambles to legal enactments. The usual style now draws a distinction between proposal and concurrence; the King orders on *proposal* of the Commoners, with *consent* of Lords and Prelates. From such initiative there remained but one step to the full right of assent, the express recognition of which follows in 5 Richard II., and in 2 Henry V. From the time of Henry VI. it became the custom to introduce the legal proposal forthwith as a project of law. The preamble to the statutes now existing, was, however, first introduced under the Tudors.

On such foundation was henceforth grounded a clear distinction between "*Statute*" and "*Ordinance*," in legal, judicial, and juristic language. Since the time when Henry II. and III. had issued important Royal ordinances, with consent of the Assembly of Notables, the more weighty law decrees, or "assizes," began to be separated from the personal ordinances of the King. The laws of this period represent a conjoint action of the King with all three "Estates" of the kingdom; they are statutes in the sense of combined maxims taking the form of parliamentary decisions. From

1 Edward III. English jurisprudence dates the so-called "*statuta nova*," because from this time forth the co-operation of the three "Estates" first becomes regular. They are cited as parliamentary enactments, in continuous chapters. The older ordinances, regarded as having equal value since Magna Charta, *statuta vetera*, were complied with by the Courts without further inquiry into the nature of the authority issuing them. Hand in hand with the now recognized right of assent pertaining to the Commons, there was developed under the long reign of Edward III. the further constitutional principle, whereby ordinances issued with concurrence of the "Estates" enjoy a stronger and more lasting efficacy, in so far that decrees issued by the King *with* concurrence of the Lords and Commons, can no longer be altered independently of them. The transition to the position of an "Estate of the Realm," with a concurrent right of "consent," was now revealed by the fact that the Lower House claimed a voice in formulating the enacted statutes. In 14 Edward III. a number of Prelates, Barons, and Councillors, besides twelve Knights and six burgesses, were already nominated to prepare and reduce to proper form such petitions and decisions as might appear suitable for permanent ordinances. In 51 Edward III. there followed the petition containing the fundamental principle that statutes made in Parliament can be annulled only with the general concurrence of Parliament, whereupon follows the answer: that they cannot otherwise be annulled. Again, under Richard II. a representation is made by the Lower House (1390), that after the closing of the Parliament neither the

Chancellor, nor the King's Council, can issue any ordinance contrary to the Common Law of the land, or in opposition to statutes previously issued, or that may at any future time be issued in this Parliament. These proposals were repeatedly agreed to, and contain a new constitutional principle. It is the logical sequence of the Teutonic *lex terræ* that thus comes again into operation. If the *jus terræ* can be altered only through ordinance *consensu meliorum terræ*, the law of the land so altered by such consent again becomes itself *jus terræ*, which in its turn can henceforth be altered only by consent of the Commons. The binding force of Royal mandates, by means of ordinances, or proclamations, remains untouched, but their application is restricted in all cases where former statutes have to be set aside.\* Such a restriction upon the King through fundamental laws, even if in contravention with his will for the time being, is already expressed by the Coronation Oath of Edward II. Through its more logical development the highly Conservative character of the parliamentary constitution comes into play, which leaves unchanged the power of the King to impose laws, but limits any alteration of the existing law by strict preliminary conditions, failing which no personal expression of the King's will is to be regarded as a law. This accords so well with

\* The difference between Statute and Ordinance, or Proclamation, is based on the fact that the Ordinance is not recorded on the Statute Rolls, and that it can be altered by the sole will of the King in Council, without the concurrence of Parliament. Already under Edward III. the Lower House expresses the wish to make certain temporary provisions by means of Ordinances, as, for instance, in respect of the sumptuary laws, so that these may, as circumstances arise, be the more easily repealed or altered.

the permanent nature of the State, that it has endured through the long lapse of ages as the fundamental principle which henceforth may be looked upon as the leading maxim of Constitutional State law.

This progressive development of the rights of the Commons silently led to the—

V.—SEPARATION OF THE COMBINED PARLIAMENT INTO TWO HOUSES,  
WITH FURTHER DELIMITATION OF THEIR FUNCTIONS.

Such a separation was already a consequence of the great advance made by the Upper House, at the time when the Lower House was attached to it at first in a somewhat modest capacity. The functions of the Great Council were superadded as a joint factor to the system of State government in the full exercise of its powers. After the invitation of the Commons *ad ardua negotia regni*, the Lords, together with the King's Council, naturally withdrew, leaving the representatives of the Commons to themselves within their special sphere of action. In 8 Edward III. special mention is made of a separate deliberation, in which the Knights of the shires and the *gents de la commune* came together and gave an answer "in common." In 25 Edward III. mention is also made of a conference of the Commoners in the Chapter-House, and henceforth the meetings of the Commons were undoubtedly held in a place specially assigned to them. In 51 Edward III. the first Speaker of the Commons is mentioned, who delivers in their behalf their joint declarations. Under Richard II. they assume the functions of a consolidated body, and on the abdication of Richard II. are recognized as a portion of the "Estates of the Realm." In accordance with this course of events, the Throne, usurped by the

House of Lancaster, could no longer rely on hereditary right alone, but also required the recognition of Parliament. The time accordingly arrived for mutual recognition of the relations as produced by these events ; hence also an adjustment of the respective functions in the Parliament of Gloucester, 9 Henry IV., through a declaration in which even the precedence of the Lower House on occasion of money-grants is already recognized :—

"It shall be lawful for the Lords to treat among themselves, in the absence of the King, respecting the state of the Realm, and about the necessary means of help. And in like manner it shall be lawful for the Commons to advise among themselves in respect of the before-mentioned State, and means, etc. Saving always that the Lords, on their part, shall not report to the King any matter resolved on by the Commons, and assented to by the Lords, before the Lords and Commons have come to one opinion and concurrence in such matter, and then in the wonted way and form, to wit, through the mouth of the Speaker." \*

But manifold doubts prevail as to the manner in which the House of Commons was constituted through *elections in the counties and boroughs*.

The building up of the *County representation* became the object of legal pronouncement only after the lapse

\* The Statute of Gloucester was occasioned by the fact that Henry IV., by his personal interference in the proceedings, had already induced the Prelates and Barons to grant subsidies, and, relying upon this precedent, sought to exercise a pressure on the House of Commons. There broke forth a violent opposition of the Commons against such influence being exercised, and in this connection the meaning of the "assurance" given is brought clearly out.



of a century, as may be inferred from the course of its development. When Edward I. for the first time invited his faithful Commons to send delegations, it was natural that the then existing corporations had to carry out the commission in the same constitutional way that they conducted their own public business generally. In the absence of a different rule of procedure, the deputing of County Knights would appear to have been treated as a mere matter of ordinary business, which was to be conducted in the County in the same way as so many other proceedings. The then existing County-court had no doubt made over its principal civil and criminal business to the itinerant Judges, retaining, however, the power of decision in petty civil cases up to 40s., for which the Sheriff had to find a fitting number of "men of law" from among the Knights and Yeomen, which latter were, by preference, elected for such matters. The county was further charged at that period with the ordering of the "Grand Jury." In addition, the important administrative business relating to the Militia, the election of Coroners, and manifold civil duties had to be transacted. In the County Assemblies the King's mandates were notified; the taxes assented to by Parliament were made known; the Assessment Committees were chosen; and complaints in the matter of taxes were heard and recorded. In any case there was a considerable amount of really important business to be treated of, causing to assemble a "crowd of bystanders" from the district-town and neighbourhood. Twice annually the assembly assumed a more solemn aspect through the previously announced appearance of the Royal Judges of Assize, and,

concurrently, of the juries chosen for such assizes. In this wise, in conformity with the law as then prevailing, these assemblies were held thirteen times a year—every four weeks—and recent researches go to show that in this intent a special day in each week was fixed, so that, for example, when the assembly took place on a Monday, the County-court met on every fourth Monday throughout the year. Hence no special invitation was issued for the ordinary meetings, and this explains why, in reference to the different matters treated of, the persons taking part were, as a rule, quite indefinitely designated as *milites* and *libere tenentes*. The Magnates, as a rule, took part only by proxy, which had been allowed since the close of the reign of Henry III. An exhaustive recent inquiry by Dr. Riess\* has thrown light on the hitherto obscure point of the election rolls. From this constitution of the County-court it is evident that there did not exist from the outset any convoking of the assembly, or any testing of legitimate claims to attend. The assembly was open to all, and there was no occasion for such scrutiny, inasmuch as according to ancient custom the proposals were brought forward only by persons of repute, and were adopted by acclamation. If any opposition arose, it could again emanate only from a person of repute, since the counter-proposals had also to be adopted by acclamation. Hence for more than a century from this time there is still no trace to be

\* Dr. Riess, "Geschichte des Wahlrechts zum Eng. Parl.," Berlin, 1885, pp. 15 *sqq.*, and pp. 36 *sqq.*, has, by his keen and searching inquiry, substantially established this view, and I find this part of his argument convincing.

met with of a counting of votes. In the proclamations and reports on elections the exclusive expression always is "common assent" of the Assembly, reminding one of the ancient mode followed in the German assemblies. (See p. 31.)\* It was clear, on the other hand, that such a state of things might easily be abused, especially by the Sheriffs conducting the elections. About the special business relating to elections to Parliament the Sheriff alone had any official cognizance, and in respect of such elections he was in a position to secure the appearance of well-disposed members at the next assembly. He might summarily propose any candidates, and so hurry on the proceedings, that the opposing party should have no opportunity to bring forward their candidate. He might even omit to put the matter at all to "acclamation," simply reporting that a certain person had been elected *nemine contradicente*. Owing to such unrestrained power, he occasionally on his own responsibility inserted in the return the name of a person who had not been voted for by anybody. The small amount of political interest taken in elections during the first period afforded free scope for such abuses. Not till the following century, when the party spirit prevailing amongst the nobles had spread to the lower classes, is there any mention of complaints touching such abuse, and of measures being taken to remedy them. Already in 1404 an ordinance was issued requiring the

\* It is a reminiscence of the original assent by acclamation that, even in the German Imperial and Local Diet the claim was often urged that those who did not give their assent should not be bound by the resolutions.

proceedings connected with elections to be notified a fortnight beforehand, although this measure was revoked in the following year. At last, in 7 Henry IV., c. 15, appears the strict injunction that the election shall be made known in the full assembly, and completed in presence of all specially summoned "men of law," as also of the others bound by law (suitors). The Sheriff was to have the indenture certified by the seals of those taking part in the election, and this record was to be attached to the "return," and remitted to the Chancellor, as the official report of the Sheriff. An Act of Parliament, 11 Henry IV., c. 1, further conveys authority to Judges of Assize to examine each report, to fine the Sheriffs £100 for any violation of the law, and to declare that members improperly nominated shall forfeit their daily salaries. In regard to the validity of the election itself the King apparently decided in Council, or personally, with advice of the Judges.

At this time, when a party organization was in course of formation, there also soon occurred a limitation of those who were to exercise the franchise, by means of a positive "*census*," 8 Henry VI., c. 7 (1430), "That in future only freeholders of 40s. income shall take part in the elections," and in a notification following speedily after, "only 40s. freeholders within the County." \* The right of voting was thereby placed on a level with

\* The Statute gives the reason at the outset thus: "That elections of the delegates have of late been made from among too large a number of people living in the same county, most of them having small fortunes, but fancying that each had the like right to vote as the Knights and Esquires, which may easily occasion murder and rebellion, strife and dispute, between the gentlemen and the rest of the people, if measures be not speedily taken to improve this state of things."

the normal rate determining the service at the Courts, which in regard to Jurymen's service was also at this period limited to 40s. The application of the "*census*" to the customary service of the *Communitas* has proved, through the lapse of centuries, a permanent guiding principle. Henceforth the qualified voters appear in a general way clearly defined and assured in their right. The Sheriff, as commissary at the election (and on that account not himself eligible), convokes the assembly. He can require from every one taking part in the election a statement on oath as to the amount of his income. Now also the rule as to a majority of votes is for the first time recognized as being decisive for the election—*majeur nombre soit retourné*. In the election writs, under Henry VI., the Sheriff is henceforth expressly enjoined to report only such as have received the majority of votes from the qualified electors (*qui majorem numerum ipsorum habuit, qui 40 solidos et ultra per annos expendere possint*).

The traditional constitution of the County Assembly has finally found its application in determining the bare right of vote, as well as the eligibility itself. First of all it was declared, as a matter of course, that both the elected and the electors must be "resident" in the county, inasmuch as the County Community as such was to be summoned to the proceedings. But as an assembly of the *meliores terræ* was in question, it was from the outset taken for granted that, for the reasons already set forth, Knights of the County should be chosen without necessarily drawing any distinction between Crown and sub-vassals. As, however, a considerable section of the owners of Knights' fiefs was

wont to decline the honour of Knighthood, it soon became necessary to be contented with Esquires (*valetti*), on which account the Sheriffs were instructed to let *milites* or *alios de comitatu* be elected (*e.g.* in 1322). The already prevailing state of things was finally settled in 23 Henry VI., c. 15, "That only notable Knights and such notable Esquires and gentlemen of the County are to be elected, who might become Knights (consequently possessed of £20 income from land), but not any Yeomen thereunder," consequently roughly corresponding with the qualification for the Justice of the Peace. And so it continued in principle for four hundred years.

Still greater difficulties are presented by the *representation of boroughs* in the Lower House. At first, Edward I. (as well as Simon de Montfort) summoned twenty-one cities and boroughs, but soon after the number was greatly increased. A recent investigation\* shows that under Edward I., in eight Parliaments, relating to which there exist fully detailed "Reports," 604 deputations from towns were present, consequently an average of 75. Comprising those which under the

\* As great obscurity prevails regarding the borough franchise in my "History of the Constitution of England" (1882) I have followed the recent researches of William Stubbs. But I must admit that the objections made by Riess are well founded. I admit that it is established by these recent researches that the elections of the town delegates, as a purely communal matter, took place in the town itself. The shrewd suggestion that, in consequence of the different wording of Writs of Election, so many small towns might withdraw from the Parliamentary elections, is still apparently subject to doubt, especially as regards the small boroughs, which under subsequent Governments have apparently been honoured with the right of election quite arbitrarily, and without regard to their constitutions.

summonses had sent no delegates, the average is brought up to 83. Under Edward II. appeared in 18 Parliaments altogether 1,083 deputations, consequently an average of 60, or, reckoning those who had not sent up, 61. Under the subsequent reigns the number of summonings was, on the whole, increased, although practically again diminished through refusals and neglect to attend. Upon what principle these writs of summons have been founded has hitherto remained extremely doubtful. It is unquestionable, however, that the smaller towns looked upon such summoning in the light of a heavy burden, by reason of the daily salaries connected therewith.\* To a few the exemption from the duty was granted as a legal favour. By the small town of Toryton it was actually urged, that it had been maliciously burdened by a summons (*malitiose ad mittendos homines ad Parliamentum oneratus*). The main purpose of getting more ample subsidies through the summoning of the towns, as also the general instruction to the Sheriffs to induce "the cities and boroughs of their comitat" to send delegates, tend to show that under the summons all towns were to be comprised; that is, all places which, by privilege, were exempt from the direct control of the Sheriff, either from their forming a "hundred" of their own, or an exempted portion of a hundred. A recent searching inquiry leads to the inference, that the exclusion of many

\* The daily salaries of the County Knights had pretty early been fixed at 4 sh., those of the town delegates 2 sh. a day. The question who was bound to contribute to this pay was the subject of an old dispute, which was never decided according to any principle, the point being settled rather by traditional local usage.

towns from the right of election was to be accounted for by the form of the summons. London had from the first been honoured by a special summons, like that addressed to the great Barons, and in the course of this period ten other cities also received the honour of a special invitation. Consequently, in the case of these towns, a neglect of the summons and the loss of their right of election could not occur. As to other towns, the writs of summons were addressed to the Sheriffs, to be transmitted to the local authorities (*ballivi civitatum*). To such towns as formed a separate hundred, the Sheriff sent the summons direct, asking for a "report" thereon, which he remitted to the State authorities with the "return" of the county. For those towns, on the other hand, which formed only part of a hundred, the writs appear to have been sent to the district authorities of the "hundred" (*ballivi hundredi*). In such cases no "reports" were returnable to the Sheriff, so that under these circumstances neither the Sheriff nor the State authorities could exercise any control over the proceedings. Hence such towns easily succeeded in escaping the summons.\* A reference to extant writs of summons renders the explanation somewhat feasible, whereas all other conjectures recently made by Stubbs are based on an unstable foundation. His supposition, more especially that the borough elections took place within the County Assemblies, is

\* An exception occurs in the case of five distant counties only, in respect of which, in order to avoid loss of time, the Sheriffs were wont to address their summons to the local authorities. Strange to say, the towns fully qualified to vote in these counties retained their position, quite as much as those which, as representing "hundreds," received the summons direct.



difficult to uphold. It appears, on the contrary, that the Sheriffs, in their report on the election, took special note of the reports of the local town authorities (*ballivi respondent*), or that, in the event of an election not having been reported in due time, they sent in their report with a *non respondent*. The "report" as to the town election was frequently forwarded after the close of the return, and subsequently registered. Hence it may be inferred that the town elections took place within each town, and were merely treated as ordinary communal business. Thus in towns where larger assemblies of Burgesses took place, the elections also proceeded from them; in towns where smaller committees had the control of the town business, these same committees had charge also of the town elections. Not unfrequently the election wore the aspect of a magisterial act, presumably in cases where a further decay in the town organization had set in. As the constitution of the boroughs at this period can only be very imperfectly determined, it can only be concluded generally that the elections took place according to the customary forms of municipal proceedings. As in Germany, later centuries show a decided tendency towards an oligarchic constitution in urban administration, manifesting itself under the most diverse forms. But everywhere the fundamental principle holds good that the personal activity and participation in civil affairs comprised in all cases personal participation in the elections, so that in these narrowed circles there was maintained a firm coherence of the electorate, self-government going hand in hand everywhere with the parliamentary franchise. In like manner the twofold number of borough

representatives was not always strictly adhered to. It not unfrequently happened that one delegate only was summoned for small towns, but occasionally as many as three or four for other places, and especially for London and the Cinque Ports. In the fifteenth century, however, the numbers became at last much more settled. At the close of the reign of Edward IV., the number of boroughs each with two members amounted to 112. For London, after some fluctuations, four members were summoned after 1378.

The whole number of members of the Lower House ultimately comprised 74 County Knights, as delegates of the 37 then existing counties, and side by side with them fully 200 delegates from more than 100 cities and boroughs. This predominance of borough members caused no jealousy or inconvenience at a time when a counting of votes did not exist, and when the proposals were made only by the more influential members, and were either accepted by "acclamation," or set aside by a counter-proposal. All elections held good only for *one*, and that, as a rule, a short parliamentary session, so that for each new session fresh elections were appointed. Members were in duty bound to attend, and had to give the Sheriff guarantees, through sureties, for their appearance. Nor could members absent themselves from the parliamentary session without permission of the King. The special personal privileges of the members begin later on, dating only from the time when the Lower House was placed on the same footing as the House of Lords, and when such privileges could be derived from the fact of their belonging to the "Highest Council" of the Crown.

Surveying the vast progress of the influence exercised by the Lower House in every direction during the second century of this period, one might almost be led to believe that a parliamentary government, in the modern sense of the word, already existed towards the close of the Middle Ages. But the essential difference from the Constitution of the eighteenth century consisted in the fact that the numerous moot points, in regard to which the royal prerogative had not yet been legally determined, were left to the personal decision of the King. In fact, the actual State rule was still centred in the King, his Great Council, and his Continual Council. There was as yet no parliamentary Budget, no influence of the "Estates" on any joint scheme of the State revenue and expenditure. The central point of the financial system still lay in the hereditary revenues of the King; before the King, and not before the Parliament, the Treasurer, by virtue of his office, presents his "statement of account,"—a kind of annual Budget, such as is mentioned for the first time in the year 1421. With the reserved right of the Crown there is still united the so-called "Prerogative," or notion of some extraordinary dictatorial power, which, in cases of urgent political necessity, might set aside the self-imposed restrictions of Right and Justice, and which might levy aids by extraordinary measures, regulations, and ordinances. Despite the acknowledged authority of the law, Edward III., Richard III., and Edward IV. not unfrequently still issued mandates with this clause, "Any contrary laws notwithstanding" (*non obstante*).

But above all the whole constitution of this organic

system was limited to the temporal aspect of the State, by the side of which still stood the Church, as a separate organization fashioned according to different principles.

#### VI.—THE ORGANIZATION OF THE CHURCH

after the times of Magna Charta had remained substantially unchanged, but had to deal with the same population, yet regarded from a point of view entirely different, both in form and spirit. At the close of the preceding period the power of the Roman Catholic Church had reached its zenith. A Supreme Head of the Church stood face to face with the temporal King, claiming even in England a suzerainty with an annual feudal tribute. A clerical body, with power of legislating and assenting to taxes, and with a jurisdiction of its own, had developed a system of self-government independent of the temporal authority. At the beginning of this epoch it was Edward I.'s endeavour to invite to the Parliament the Chapters and the Parish Clergy, as well as the Prelates. The notion of a representation of the lower clergy, side by side with the Bishops of the English Church, had already been mooted and carried into effect by the great Archbishop, Stephen Langton, soon after the issuing of Magna Charta. With the view of restraining the Papal prohibition against the taxing of the clergy, Edward I. wished especially to confer on the lower clergy a position in the Commons analogous to that of the Prelates in the Upper House, so as to awaken and foster in this class also a feeling for national communal life. He, therefore, issued, with the preliminary words

"*Præmunientes*," an order to all Bishops to summon to the Parliament the Deans and Archdeacons in person, each Chapter to be represented by one, the Parish Priests of the diocese by two fully-empowered delegates. But the more Knights and Citizens, in their character as Commoners, became welded in the Lower House into *one* corpus, the more the middle class of clergy and laity seemed to become estranged from each other. The clergy refused to answer a summons to a Lay Parliament, remaining apart in assemblies of their own, and passing their separate assent to the taxes. A cohesion of the temporal middle-classes with the lower clergy could not be effected, on account of the entire difference existing between them in calling, education, and social interests, and least of all was this possible with an unmarried clergy, like that of the Roman Catholic Church. The strong inclination manifested by the clergy to hold themselves aloof, was met by as strong a feeling on the part of the Commons in Parliament against submitting to clerical rule, and they passed at this time a number of laws against the real or imagined encroachments of the spiritual power. Under the general designation "*Præmunire*" a whole series of such encroachments was threatened with severe punishment. The first Statute 7 Edward III., st. 1, was directed against appeals to Rome, in matters pertaining to the cognizance of the King's Court. The subsequent writs of "*præmunire facias*," threatening banishment of the Realm, with heavy corporal punishment and money penalties, form the introduction to a series of statutes against assumption of clerical offices prejudicial to the King or to any of his

subjects ; against the transference of moneys abroad ; against the bringing of sentences of excommunication from abroad ; against exemption of clerical persons from the ordinary Courts ; against immunity from tithes, and against the interference of the Pope in clerical elections. The Statute of Provisors 25 Edward III., st. 4, threatens especially all persons accepting the Papal presentation to a benefice with imprisonment and forfeiture of all official income. The practical consequence, however, of the latter expedient was merely a compromise between the Crown and the Curia, whereby the King and Pope, as a rule, secured their nominations, while setting aside a free election of the Chapters. In connection with these measures were a number of supplementary statutes against the introduction, acceptance, and carrying out of Papal Bulls, prohibitions against alienation in mortmain (7 Edward I., st. 2), and the like. As a symptom of the public feeling, it may be stated that in the year 1340 a layman was for the first time installed, by wish of Parliament, as Lord Keeper of the Great Seal, and that in 1365 Prelates, Barons, and Commons unanimously resolved to refuse to pay to the Curia the feudal tribute, which had not been paid for thirty-three years, on the plea that "it had been promised without their consent." Hostility to the clergy was also manifested under Richard II. by the protection extended to heretics (Lollards), who, as forerunners of the Reformation, found their chief representative in Wycliffe. It was only under Henry IV. that the Church succeeded in obtaining from the State more stringent punishments against heretics, and this under continuous opposition on the part of

the Lower House. Under Henry V. heresy was, for the first time, declared a felony in contravention to the Common Law itself. It is not easy to determine how deeply rooted was the anti-papal movement at this period. It was the national sentiment mainly which felt outraged at the papal pretensions at a time which coincided with the seventy years' "Babylonian Captivity of the Papacy at Avignon." Some keen-sighted, conscientious men of that time had a clear insight into the far-reaching corruption that pervaded the whole Church; but their voice certainly found more echo in the national sentiment, than in any conviction of the error of any particular Roman dogma. In any case, the temporal section of the community was in that century itself pre-occupied with dangerous elements of strife, which had to be arranged before the spiritual controversies could be settled.

In fact, in the temporal organization the harmonious coherence of the different factors was by no means so complete as one might be inclined to conclude from the progress of the Lower House. Relatively speaking, the weak point lay at that time in the alliance of the great military vassals with the *Communitates* represented in the Lower House. When it is remembered that, after the summoning of the Germanic imperial free towns under the "Estates of the Realm," the two bodies of princes of the Empire could never be induced to award to these citizens an equality in rank and authority, it may be easily understood that the great military nobles felt most aggrieved at the equal rights now vindicated by the middle classes. On this ground a disastrous rupture once more ensued.

## VII.—THE CENTURY OF RENEWED STRIFE, AND THE WAR OF THE TWO ROSES,

which includes this epoch, were founded on a social process, which repeated itself after the Reformation, just as in Germany nowadays, and at all times, as if in accordance with some natural law. To a period of social elevation to political unity and power there succeeds a relapse into the strife and antagonism of conflicting social interests.

No doubt an admirable foundation had been laid by the English *communitates* for a harmonious blending of classes, by reason of the share taken by the various sections of the community in all matters concerning the State, according to the measure of their personal activity and to the extent of their assessment. But, on the other hand, there was manifested by the governing-classes all the more vehemently a spirit of exclusiveness and clannishness, which took pleasure in all the more sharply contrasting the old class distinctions with the new order of things.

Although the inner life of the now secluded insular nation had entered on a peaceful evolution, in which the feudal and national military systems had already been amalgamated, yet all the more fiercely was the old baronial spirit now stirred up, with its old claims to exclusive military honours, with its ingrained love of feuds and disorder.

If the hard discipline of the Norman feudal system had schooled the nation to military rule, civic order, and allegiance to the Crown, nevertheless the spirit of personal defiance and resistance broke out afresh



all the more violently under each successive feudal monarch.

While in every phase of social development the influence of property still tends to constantly encroach on the weaker classes, to this was now added in England a pitch of prosperity in the economic conditions elsewhere unrivalled in the European world, multiplying the revenues of the great barons, and imparting a kind of royal state to the social influence of the powerful peers of the realm.\*

In England the power of the King had already established a legal equality of classes, had substantially maintained the alienation and free purchase of land, as well as the freedom of industrial labour, and had well-nigh removed the last remnants of serfdom. But all the more marked again became the tendency to render inalienable landed estates by way of entails, in constant opposition to common law and judicial decisions. In the same way the efforts of the industrial classes aimed at the formation of exclusive bodies by instituting staple rights and guilds, in suitable places even government by guilds, and by limiting apprenticeships, in reciprocal operation with all which followed general strikes of the working classes, and sanguinary cruelly-suppressed outbreaks of the peasantry.

But all these social reactions were at last swept aside, and all the more vigorously repressed in proportion

\* A proof of the great wealth of the Crown vassals at this time is afforded by a complaint in damages, by the older Despenser, under Edward II., where, amongst his movable property, he enumerates 28,000 sheep, 1,000 oxen, 1,200 cows, 500 cart-horses, 2,000 pigs, and a corresponding number of agricultural implements, as also arms for 200 men.

as they had boldly pressed to the front. Yet such ever-recurring throes seem to be unavoidable in order to establish a new order of society on a firm basis.

But in conjunction with such social conflicts, a transition was made towards introducing a system of mercenary armies, which on the Continent also led in due course to a perilous crisis in social life and in the public administration. In the English feudal militia, as well as in the national militia, a warlike spirit had at all times been maintained, although not always in the same degree. Both organizations supplied excellent materials for the formation of paid troops, for the common soldiers were to be found among the sturdy Yeomanry, and the leaders amongst the warlike nobles, while the needful means were provided by the wealth of the land. For the foreign wars (1338-1454) there grew out of this a system of freebooters and men-at-arms, who, on their return from abroad, became a standing menace to the country.

Out of these elements the crises were gradually prepared which, passing through three epochs, culminated at last in the most tremendous catastrophe.

The *first* had already been silently preparing under the brilliant reign of Edward I. In spite of the financial difficulties which arose from the wars with Wales, France, and Scotland, this period was pervaded by a general feeling of harmony. This kingly rule, aided by the patriotic co-operation of all orders, now vigorously developing their innate energies, formed a striking contrast to the wretched personal rule of Henry III. Symptoms of the growing independence of the great vassals may, however, already be detected in the most

flourishing years of this period. But immediately after the death of Edward I., the heedless surrender of military strongholds, and the unwise nominations to the highest offices of State, as well as the wasting of the public revenues on a favourite, made it evident that under Edward II. the Crown had again abdicated its administrative functions. It seemed as if a return had again been made to the provisions of Oxford. The offended barons met in arms, and forced the King to appoint a council of regency. But although the mightiest earl of the realm stood at the head of the "Lords-Ordainers," there nevertheless resulted nothing but dissension, followed in a few years by the overthrow of party government amid mutual acts of recrimination. With the aid of the Commons the control of the nobles was got rid of; all measures of the Ordainers against the prerogative of the Crown were cancelled, and a solemn compact was drawn up: "That in Crown and State matters the King alone can decide, with the assent of the lords spiritual and temporal." When at last, through the open revolt of his guilty queen, the weak and helpless King was forced to abdicate, and was murdered in prison, this first crisis took rather the character of a conspiracy of the palace than of a serious disturbance of the monarchical system of government.

The *second* important crisis was silently prepared under the model parliamentary rule of Edward III. While at this period the Lower House is being formed; while the nation is inspired with a feeling of proud satisfaction by the brilliant results of the French wars, and the Parliaments willingly grant hitherto unheard-of

supplies for the achievement of great projects, the army, constituted of the nobility and county militia, has been completely reorganized on French territory. The heroic person of the Black Prince, assisted by the principles of new tactics and strategy, had vanquished the unwieldy French feudal militia on many a glorious battlefield. Nevertheless, despite the brilliant results of this fifty years' reign, at its close a spirit of resistance began to make itself felt in Parliament against the now aged and enfeebled monarch. In consequence of the early death of the Black Prince a Regency was instituted for his infant successor, Richard II. In the name of the King, still but ten years old, the Great Council of the Lords held practically the guidance of the Realm, and under their administration hostile Court factions already began to be formed. The personal reign of the King, at first so full of promise, commenced somewhat frivolously with extraordinary grants to favourites, in consequence of which, in the tenth year of his reign, Parliament already assumed a threatening attitude, to which he was fain to yield. About this time, after repeated parliamentary complaints, a sentence of death was even passed on the King's judges themselves in consequence of a judicial decision in the interest of the royal prerogative. But a reaction was brought about by a revival of the King's personal energy, and by a sudden act of surprisal against his opponents, which met with the support of the Commons. A Parliament beset by armed men annuls all resolutions against the royal prerogative, grants a subsidy for life to the King, and offers to lend aid in securing a sanguinary retribution, as also for the

institution of a committee which, after the close of Parliament, was to continue in the possession of unconstitutional powers. This committee, however, presently launched into excesses, whence followed a subsequent disavowal and abrogation of all its ordinances, judgments, and provisions. There ensued a direct interposition of armed force in determining high parliamentary appointments, the application of the laws of high treason against vanquished opponents, and the consequent rekindling of the fiercest passions. But as Richard made use of his regained power only for vindictive retribution and the arrogant maintenance of the royal prerogative against the clergy and laity, the ill-advised King found himself abandoned by Parliament, Church, and People, succumbing at last to the attack of his cousin, the Duke of Lancaster, who, after landing at Ravenspur with a military escort of sixty followers, was in a few weeks at the head of the malcontent Barons and an army of 60,000 men. The results of this reign were serious encroachments of the Lords in the nominations to high offices, the temporary control of the finances by the Commons, and for both Houses repeated impeachments of the great officers of State, which in subsequent parliamentary law were quoted as important precedents. But the closing incident of this eventful crisis was the formal deposition of the sovereign by armed force, and a formal resolution of both Houses of Parliament, notified in the most defiant form of renunciation of feudal allegiance followed by the murder of the imprisoned King.

The *third* epoch in which the catastrophe was fully developed was again prepared in a generation abounding

in warlike deeds, under the reigns of Henry IV. and V. The reign of the first King of the House of Lancaster began with the unsurmountable difficulties attaching to a usurped position, and was beset with conspiracies, revolts, and external dangers. As the warlike nobles looked upon this dynasty as their own creation, their powerful followers soon vied with the old opponents of the House of Lancaster in resistance against the new King. The records of the Council of this period afford a picture of the incessant cares to which the high-spirited monarch prematurely succumbed. A King in this position, surrounded by pretenders with equal or even better rights, was fain to live on terms of peace with his Parliament. Hence there is no longer any question (as under Richard II.) of levying taxes without Parliament, even in sore times of public need. In 6 Henry IV. the subsidies were granted only under the mistrustful conditions attached of having the accounts supervised and examined. In 8 Henry IV. there followed thirty-one momentous articles, all of which were granted. The King was to appoint sixteen Councillors, and consult with them alone, and not dismiss them without clear proof of guilt. No official of the Courts of Law, or of the Treasury, was to be nominated for life. The Chancellor and Keeper of the Privy Seal were to be "*responsible*" for the legality of each grant, whether by patent, judgment, or in any other manner, which was to be issued under the seal in their custody, etc. In the next Parliament, however, the King sent a messenger to the Commons to the effect that in the last Parliament a law was passed which had hurt his freedom and prerogative,

and to the removal of which he requests their consent. The Commoners grant this and receive the thanks of the King. This new position of the Crown was fraught with serious consequences, especially for the above-mentioned established position of the Peerage. A sovereign whose throne rested only on its recognition by the Parliament, could no longer treat the House of Lords as being an assembly summoned by his sole authority, by arbitrary rule, and free choice. The Commons also agreed to this view, while the Lords recognized the right of the Commons to an assenting voice in the granting of supplies, and to take part in the enactment of legislative measures. What could be urged against these mutual acknowledgments, which now followed in the Statute of Gloucester, 9 Henry IV.? Both Houses in return acknowledged Henry as lawful King of England. From the proceedings which led to the establishment of this dynasty, it wore the appearance of being the creation of the warlike nobles, whence also followed the concessions to the Church authorities, to whom were further granted more stringent measures against heresies in opposition to the will of the Lower House.

This precarious state of the Crown was still concealed by the short but glorious and popular reign of Henry V. The great campaigns on the French territory caused the energies of the State at this time to be mainly directed towards foreign affairs, in consequence of which there was a suspension of home legislation and a neglect of national grievances in Parliament. To the splendid triumphs of the monarch, in whom the romantic spirit of chivalry and loyalty to the

orthodox Church once more blazed forth with full sunset glow, there corresponded the ready co-operation of an aristocracy sated with glory and plunder, and of a nation proud of these great achievements.

The new dynasty seemed apparently so well established that, after the early demise of the gallant monarch, a Regency for Henry VI., a child nine months old, administered by his warlike and politic uncles, Bedford and Gloucester, could be safely maintained under trying circumstances for some time longer. The numerous regulations of the Council dating from this time certify to a well-ordered and resolute management of public affairs. The King, who, in the meantime, had reached his majority, was by his unfortunate disposition foredoomed to a life of irresolution. The dangers of an aristocratic rule, without the control of the Crown, became once more evident in the bitter feud between the Duke of Gloucester and Cardinal Beaufort with his powerful adherents. This hostile party found in Margaret of Anjou not only the queen of its choice, but also a party-leader of virile spirit and womanly craftiness, combined with all the characteristic talents of the House of Anjou. The murder of the Duke of Gloucester no doubt procured to the constituted Court party the control of State affairs, but also earned for it the opposition of the Duke of York and his adherents. The deserved unpopularity of the Government then led again to the charge against the Duke of Suffolk (1450), and to his murder. The party passions, which were now inflamed on both sides, awoke for the first time in the House of York the design of a succession to the Throne, to which, according



to the right of primogeniture, this branch of the royal family was nearer allied than the House of Lancaster. In the meantime, the state of the Realm had grown much worse. Since the murder of the Duke of Gloucester everything had gone wrong; Henry V.'s conquests were lost; the Constitution was carefully observed, but the administration incompetent; the Crown was in straits, the treasury empty, the peace of the country in jeopardy, whole districts in constant fear of robbers and disorder. The majority of the nobility still held firm, with the spirit of feudal fealty, to the House of Lancaster. In opposition to this party now stood the Duke of York, the largest landowner in the Realm, the allied family of the powerful Nevilles, the City of London, and apparently the majority of the urban population. In consequence of the further alliances of the royal family, there had been formed two parties, equal in strength, and striving for a like purpose, that is, to win for themselves the Crown, with the consequent reprieve for their treasonable acts. With difficulty the parties were still for some years kept in check through their respect for the kingship. As soon as this barrier gave way through the hopeless impotence of the King, there ensued a raging strife, in which both parties fought not against, but *for* the power of the throne,—a strife in which acts of self-defence, of violence, and of vengeance were soon confused in the general chaos.

The battle of St. Albans (1455) heralds the Thirty Years' War of the Two Roses. After a short period of seeming peace, the King, in 1460, fell into the hands of the Duke of York, who remained satisfied with the

position of Protector of the Realm, and the assurance of the succession to the throne. But taken by surprise in a dashing attack by the Queen, the Duke of York succumbed, the victorious party, after the fashion of the House of Anjou, giving the signal for the execution of their captive opponents, and for gross acts of violence, which in the following year brought about the downfall of this detested Government. Henceforth the character of the contest seems to take full development. The constitutional power of the King's Council, and the whole active element of State government, were shattered during this strife, in which neither ecclesiastical, nor any legal authority in the nation, was in a condition to determine on which side lay the right to the Throne. No solution was any longer possible through the Parliaments, for each served the party in the ascendant, by which it was summoned, and passed its condemnation on the other. The warlike vassals now appear with militarily-organized followings, which form regular battalions of extemporized troops, and which are increased tenfold by paid mercenaries. These retainers of the nobles were now unfortunately swollen by the veterans returning in swarms from the French wars, with the tactical experience acquired abroad, to which by this time was already added the use of heavy guns. The issue of the conflicts combining such heterogeneous elements depended so far on surprises and accidents, that the battles were turned into butcheries, the outcome of which could no longer be calculated.

The battle of Towton (1461), in which more than 100,000 Englishmen were pitted against each other, determined the triumph of the Red Rose over Margaret

of Anjou, and brought the heir of the House of York to the Throne. The sanguinary internecine strife of the high nobility amongst themselves rendered Edward IV. (1461-1483), with a short intermission, ruler of the land, at a period of profound demoralisation. This wild strife took its special aspect precisely from the interweaving of all the great noble families with the Royal House, and from the centralisation of all State power in the King's Council and Parliament. The politic head of the House of York had secured his victory at the cost of the great families of the land. Upheld by the House of Commons, Edward IV. declared the reigns of the three sovereigns of the House of Lancaster to have been usurpations. The Lancasters, Somersets, Exeters, Northumberlands, Devonshires, Wiltshires, in all 151 Lords, Knights, and Prelates, were declared guilty of treason—not by sentence of a Court of Law, but by the summary process of a parliamentary "resolution" (Bill of Attainder). It has been computed that one-fifth of the landed property reverted through outlawry and confiscation to the hands of the King, who conducted his rule with pitiless severity. This is the first reign during which not a single statute was enacted for the redress of grievances, but there prevailed rather a kind of martial law, with a reckless application of the exceptional legal and civil powers of the Crown, and the ready concurrence of the Parliament. The kingdom continued practically in a state of war, which also explains the recurrence to those courts martial that have bequeathed to later jurisprudence a point of very serious controversy.

The royal power, which Edward IV. had acquired by blood and cruelly exercised, fell after the murder of his sons to the usurper Richard III., who by popular concessions sought in vain to atone for his open defiance of all Divine laws and human rights. The almost incredible crimes committed in the course of his reign by this tyrant are psychologically explained through the spirit of the times, when the foundation for firm and honest convictions had disappeared, together with the moral sense itself, in consequence of the degeneration of the Church, which responded even to Richard III.'s flatteries with a show of homage. Abandoned by the greater part of his adherents, Richard was soon overcome by an alliance of the remnants of the two aristocratic factions. He thus through treason lost the Throne acquired by treason, leaving it to the new House of Tudor, in which Henry VII., through his marriage with the heiress of the House of York, united the claims of the two lines of the Royal House. But before the end of the struggle twelve pitched battles had been fought, and eighty princes of the Royal House had perished, either slain in battle, or murdered, or despatched by the hand of the headsman.

In the absence of all contemporary history the dramatic masterpieces of Shakespeare may be taken as representations of the history of those times. In spite of some erroneous statements as regards persons and sequence of events, they depict the psychological character of the incidents with obvious fidelity, making it all the more surprising how a period of such national upheaval could be followed by such an endless series of human depravity and crime. It has already been

pointed out higher up how this catastrophe had long been foreshadowed. Whilst the heroic personal character of Edward I. had accustomed the nation to a warlike spirit, and had consolidated the bounds of the realm, the long and warlike rule of Edward III. had, through the wars in France, led the united nation to a consciousness of its power, and had impressed it with a sense of its commanding position in Europe. In these struggles, in which the nation readily put forth all its strength, the military aspect of the feudal system, which by the Anglo-Norman Kings had been partly kept down, partly diverted into other channels, attained to a fulness of after-growth such as on the Continent had been developed amid constant feuds and struggles, moulding the various social classes to their present form. It was the final effort at such a disposition of the classes that was once more attempted in England, and which at last expired on the desperately fought battle-field. Thanks to the rapid revival of the insular constitution of the social order, Englishmen themselves seem to have soon forgotten how the reminiscence of a romantic chivalry had imparted a peculiar stamp to those turbulent generations. From the lowest to the highest grades the reawakened love of strife had given a distinctly military tone to the newly-organized national militia. It was by no mere accident that since the time of Edward III. the worthy English reeve had assumed the military title of "Constable." From the highest to the lowest in the King's Council the newly-created "Bannerets" began to be summoned as such to the Parliament. In fact, for some time the members of the Upper House were classified,

according to military rank, as banneretti, barons chivalers, barons milites, armigeri, etc. In connection with this military comradeship came the occasional renewal of the judicial combat, and even of violent feuds between the warlike Barons. One of these feuds, that had been protracted for many years, was brought to an end by one of the parties losing 150 men in a fray. In further connection therewith are found numerous attempts made for the formation of an hereditary nobility of inferior rank, after the fashion of the Continent. The use of coats-of-arms, as family symbols, had become a fixed custom during the French wars, and was regarded as an hereditary right during the reign of Henry VI. In the time of Richard II. a patent appears, in which John de Kingston is raised to the "rank of a noble." In the 29 Edward III. a certain John Coupland had already been nominated as "hereditary Banneret," and for some time such a dignity was looked upon as a degree of nobility, so that under the Regency conducted by the Barons during Richard II.'s minority, the election of a Banneret to be a member for the county was declared inadmissible. In the same connection stands also the often-recurring precedence of the *generosus a nativitate* in the Parliamentary Rolls of this time. In 39 Henry VI. a county election was even declared void because the person elected was not of noble descent. Of still greater importance was the endeavour to form a Court of Chivalry and Honour out of the *curia militaris* of the High Constable and Marshal. For a time the Courts of Chivalry exercised an actual jurisdiction, although in 2 Richard II. the Lower House protested against

such power of inflicting punishment in criminal cases. During a period of popular concessions to the *gents de la commune* (13 Richard II.), the assurance was given, that in any such Court no dispute shall be treated which could be entered before an ordinary Court of Law, but only "cases of tort resulting from breach of contract and other objects pertaining to records of arms and war, both within and without the Realm," and with the right reserved of appeal to the King. But as *jurisdictio extraordinaria*, such a Court of Chivalry could interfere only upon special mandate (writ), and after expiration of the Wars of the Roses such writs were no longer issued, so that of the former judicial body there remained only a College-of-Arms.

But the most dangerous issue of this class feeling was the revival of the ancient system of retinue, under the name of "liveries," which the Seigneurs formed out of their Court functionaries, sub-vassals, farmers, servants, and neighbouring yeomen. By the word "livery" was originally understood the equipment of the officials and servants of a great Lord or corporate-body with clothes, combined with their maintenance. The clothing now assumed the character of a uniform and badge of service, and it became an object of ambition to get together the largest possible number of such men, wearing their master's livery, as a sign of high seignorial position. The liveries were, therefore, assigned to all who would wear them, and they became to such a degree tokens of connection, that even princes and great lords wore the badges, signs, and colours of one another, out of courtesy. With the formation of

the powerful Court parties, these became the emblems with which the strifes of dynastic factions commenced. In the same way the practice became more general of fortifying the manor houses and castles of the great nobles, which in the time of Edward III. were allowed in large numbers, without causing any misgiving as to later consequences. In the wars on French soil, a fresh stimulus was given to the formation of armed bands by the recent appearance of freebooters and mercenaries, while in addition to the freely-hired soldiers the King took into his daily pay whole baronial companies as privileged corps. Thus arose on French ground those connections between the "Senior" and his heavily-armed Knights and errant serving-men, resembling the continental feudal system, but without being firmly based on territorial property. Thus we find, for instance, in a camp on French ground the following items: an earl, with a daily pay of 6s. 8d., with 100 horses = £5 6s. 8d. daily pay; a Viscount @ 5s. personally with 50 horses = £2 5s.; a Baron @ 4s. personally with 30 horses = £1 14s.; a Knight @ 2s. with 10 horses = 12s.; an Esquire @ 1s. 6d. with 6 horses = 7s. 6d.; altogether 13 Earls, 44 Barons and Bannerets, 1046 Knights, 4,022 Esquires, etc., 5,104 subordinate Officers and mounted Archers, 15,480 Archers on foot, 4,750 Welshmen, etc. These were the corps with which were fought the famous battles of the French wars. But in the course of a century there had also sprung up during these wars an unruly generation amid that wild confusion and lack of discipline, which is wont to get the mastery of all veteran troops during the course of protracted wars and camp



life. Here was a fresh element of disturbance, which, severed from all home ties, knew no longer where to find a resting-place in the rural or urban communities of their native land. Accustomed to camp life, to plundering and spendthrift habits, the returning Barons found it more difficult still to settle down to peaceful ways than the many thousands of their hired followers. In the sober community life of their own country, in the administration of the militia, of judicial and civil affairs, there was no scope for fighting and booty. And when, after the ultimately disastrous issue of the contest in France, this rude element came streaming home to England, the factious spirits among the nobles found among these bands, accustomed to their guidance, an only too willing material ready to hand, out of which every wealthy and popular leader might form regiments, and by combination even armies, for the great civil war. It was these inveterate habits of the baronial and military orders that, according to place and circumstance, now also brought disorder into the inner life of the shires. These liveried bands lay the foundation for party-strife, which with its deeds of violence thwarted the administration of justice, and interfered with the maintenance of the peace. The protection of the Barons, with their uniforms, their hats and badges, was extended to an excessive number of fire-eating swash-bucklers, who could no longer keep within due control, oppressing the surrounding populations with their deeds of violence, while protecting themselves from the pursuit of justice by means of their alliances, and through the protection of their powerful lords (by maintenance and champerty). For two generations this

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state of things led to the constantly renewed but useless prohibitive laws against Liveries, subsequently to the intervention of the Royal Council, and finally to the founding of the notorious Star-Chamber.

Full of instruction for later generations is the final issue of the desperate resistance against the order of Society as then already constituted. According to the fundamental principles bearing upon class relations as established under Edwards I., II., and III., those attempts at constructing another order of Society were in fact an obsolete and desperate undertaking, which, the more it felt itself restrained within legal bounds, the more it sought to override all restraint. The Peerage was itself only just entering on the formation of an aristocracy by birth, and that within very narrow limits. The high-minded Edward I. had not looked upon the marriage of his daughter with a brave knight as at all unseemly. The body of military vassals had, since the Conquest, been grounded on the condition that each free owner having an income of £20 should be bound to heavy cavalry service. In the like sense, Edward I. insisted that all owners of £20 income from land (as the first class of the land militia), were to become Knights, and, in spite of much opposition, this ordinance was subsequently recurred to again and again as a fiscal expedient. In the judicial and civil administration, in the organizing of parishes, towns, and counties, and in the parliamentary representation of the *Communitates*, there was nowhere found any motive for the formation of an exclusive class or of a privileged hereditary nobility. Between the county gentry of noble stock and the ordinary landowner no

class distinction could be established, nor in the founders of great houses any ingeniously devised system of ancestral descent. Hence the real firm elements of coherence between State and Society remained intact amidst the wildest conflicts then prevailing. Amid the din of arms the Courts of Law of the Realm, the itinerant Justices and Juries, went their accustomed rounds, and the jurisdiction of the Chancellor was exercised in the case of suits arising in the newly constituted Court of Equity. According to the circumstances of time and place, the Liveries continued to occasion serious disturbances, which called for all the more energetic measures of repression. Strange to say, at this period of the deepest demoralisation among the higher classes "the era of the great Lawyers had begun."

From a summary survey of the political situation it is evident that in the suicidal conflict of the great lords the advantage lay decidedly with the House of Commons. So far as the nobility was still too overweening to allow of any equal distribution of power, it was through its own fault pushed back into the position of the *Magnum Concilium*, just as in the fate of individuals blood-guiltiness and retribution were seen to follow in never-failing succession.\* "The age of luxury and atrocity" came to a close, with the constitutional result of a balance of powers between the two Houses of Parliament.

\* From the 19th of June, 1312, when, under Edward II., his favourite Gaveston was beheaded by his political opponents without trial, there began an uninterrupted chain of acts of vengeance, during the strifes of the English nobility, which recalls the early times of Germanic deeds of blood, and which, during the Wars of the Roses, was carried out with such fearful precision and completeness that no murder ever remained unavenged.

So also a summary survey of the social situation shows that the class relations, constituted by the principle of self-government, remained the firmest element of social order. Excluding the very highest social strata, which in fact had almost disappeared towards the close of this period, there directly followed immediately below them a thoroughly staunch and affluent class of landed gentry. As the leading element in the Lower House, amongst the Justices of the Peace, in the Militia and Shire administration, this class formed in a common sphere of usefulness permanent ties of fellow-feeling with the freeholders and yeomanry, as well as with the most prominent burgesses,—ties which were also further strengthened by family alliances. From the politically qualified "third Estate" there now already slowly emerged the urban notables, who, as "Esquires" in the Lower House, as well as in the Commissions of the Peace, took their stand on a level with the landed gentry. By the settled legal principles of the preceding century there was also established, down to the lowest social grades,\* a standard of equality

\* An excellent sketch of the development of the social conditions at the close of the Middle Ages is given by Stubbs, III., chap. xxi. The opposition of the labouring-classes, which, under Richard II., had led to the great war of the peasants, and which had been joined by the working-classes of the towns, was settled in a peculiar manner. The pestilence (the so-called Black Death) had, in 1348 and following years, swept off the population in such large numbers (the most recent account by Rogers fixes the decrease in population at a third), and had produced such a lack of working hands, that the landowners were glad to acquire the indispensable help by contracts of free lease and wages. According to Rogers ("History of Labour," 1885) the wages at that time rose to one and a half times the previous wages, while the price of provisions remained unaltered. He considers the fifteenth century as being the Golden Age of the working-classes.

before the law, which, while possibly placing practical obstacles in the way of skill and merit, nowhere opposed legal barriers to social advancement. Thereby was imparted to the nation a profound impulse towards the development of personal capacity and energy, by which the course of the following centuries was determined.

## IV.

### Parliament during the Reformation.\*

#### TABLE OF KINGS.

HENRY VII., 1485-1509.		EDWARD VI., 1547-1553.
HENRY VIII., 1509-1547.		MARY, 1553-1558.
		ELIZABETH, 1558-1603.

THE internecine conflict waged by the great Barons, and the subsequent exhaustion ensuing, could but lead to a strengthening of the kingship. The landed gentry and burgesses alike, after the romantic dream of the conquest of France had passed away, again directed their thoughts to the peaceful development of the island-state; while the increasing spirit of independence among the lower classes also inclined more to kingly rule than to a government of factious nobles.

\* The laws and enactments bearing on the time are contained in "Statutes of the Realm," vols. ii.-iv. The parliamentary proceedings are recorded in the "Rotuli Parliamentorum," from 12 Henry VII., in the Parliament Office. With 1 Henry VIII. begin the official "Journals of the House of Lords," down to August 30th, 1642. The "Journals of the House of Commons" begin with 1 Edward VI. (1548). For the political history: Hallam, "Constitutional History," vol. i.; and, by way of check, Lingard, "History of England"; with comprehensive references to documents: Froude, "History of England since the Fall of Wolsey," 1858, vols. i.-xii.; Pauli-Lappenberg, "Geschichte von England," vol. v.; Ranke, "Englische Geschichte," especially in sixteenth and seventeenth centuries, vol. i.

With keen insight, the dynasty of the Tudors, beginning with Henry VII., had recognized the situation. After the military organization of the chief Crown vassals had revealed itself as the main peril of the monarchy, the curbing of the great barons naturally became the leading idea of Henry VII.'s policy, frequently resulting in pitiless measures of repression. "He held a firm hand on his nobility," says Lord Bacon, "and recurred rather to churchmen and lawyers, who, though having the interest of the people, were more yielding withal in his regard." The equivocal financial artifices resorted to by his Exchequer proved so far useful to him, that he found it necessary to summon Parliament once only during the last seven years of his reign.\*

The same policy was followed by his successor, Henry VIII., in still more imperial fashion. By the publication of the State papers, so full a light has been thrown on the merits of Henry, that the most recent historians have inclined rather to over than to under estimate them. Certain it is that now, for the first time, the State administration showed a systematic forethought for the working-classes, in the regulation of wages and the price of provisions, in prohibitions against depopulating the land by vast farms and

\* Amongst others, the Earl of Oxford, who had provided his Royal guest with a brilliant reception, with a numerous array of retainers in uniform, was fined £15,000 for having infringed the prohibition against "liveries." From this reign, also, dates Archbishop Morton's mode of assessment, styled "Morton's Fork," whereby those who were bound to pay the tax, if they spent much money were assured that they must be rich seeing how much they spent, whilst those who expended little were told that their parsimony must have made them wealthy.

pasturages, and even against devices for the displacement of handicrafts; as well as by serious measures for promoting education, industry, and the care of the poor, and even for the amusement of the people; lastly, by friendly countenance given to guilds, industrial associations, and trading companies, and other suchlike measures in harmony with the intelligence of the times. But invaluable more especially were the services rendered by Henry in the choice of able officials. The need of a firm administration, which the House of Lancaster had been unable to achieve, once more revealed to the nation the strong side of the monarchy. The aptness of the Tudors at understanding the national sense of right, combined with their respect for the legal institutions of the Land, rendered these sovereigns popular, notwithstanding their thoroughly harsh administration. But the fact that this dynasty applied all its energies to carry through Church Reform, the great movement of the time, ultimately rendered the Virgin-queen, Elizabeth, an object of profound veneration to her subjects.

The enlightened appreciation of land and people on the part of the Tudors was displayed more especially in the continuance and progressive development of county and local organization.

Prominent in this respect appears in its full activity the system of self-government introduced under Edward I.

The organization of the militia acquired at this time paramount importance. After the practical extinction of the feudal military system this militia formed the only constitutional armed force of the land, for which,



under Henry VIII., special Lieutenants (subsequently Lords-Lieutenant) of the King were appointed, and for which, by 4 and 5 Philip and Mary, c. 2, 3, fresh and complete regulations were introduced for equipment and inspection.

The Judicial system continued to be based on the systematic co-operation of the King's Judges, and of Local Committees, at the Assizes and Quarter-Sessions. Worthy of all praise was the attitude of all the sovereigns of this dynasty in regard to the independence of the Judge's office, and the maintenance of its integrity.

In the sphere of police administration, the office of Justice of the Peace acquired an ever-increasing importance. With the Tudors begins a codification of the model laws relating to labour, and to the control and care of the poor; a consistent police regulation of labourers' wages and of the industries; legislation against vagabonds and beggars, and in regard to public-houses, licences, and the collateral branches of the moral police; but unfortunately also after the Reformation an inexhaustible series of State enactments bearing upon the control of religion. The Justices of the Peace were further empowered to institute preliminary investigations concerning offences of every kind. With all this was further connected a higher control of parochial administration, to which we shall have presently to return. It may be easily understood how, through such new duties, the political importance of the office expanded, and with it the political influence of the classes who in counties and boroughs habitually discharged the office of Justice of the Peace. The framework of this office was determined by a general

form of the Peace Commission, in 1590, which continues in force to the present day.

Lastly, in the province of financial administration, not only was the regular co-operation of the local boards continued for assessing the subsidies, tenths, and fifteenths, but it acquired far greater importance through the further development of the communal taxation system.

While the older institutions of the self-government system thus remained in vigour, there was superadded in connection with the Reformation an expansion of the parish administration, by which the middle classes also acquired an active share in the communal life, as well as a more compact organization. Above all, the parish now afforded the legal groundwork for the charge of the poor, and at the very beginning of the Reformation a compulsory duty in this relation was imposed on every district. The total collapse of the Church organization for the charge of the poor, the dissolution of the monasteries, and the fluctuations occurring among the working-class at this period, called for a series of organic enactments which found their completion in 45 Eliz., c. 3. The charge of the poor became henceforth a legal burden on any parish where the pauper was born, or had been living for three years. For the personal duty, the new office of "Overseers of the Poor" was established, and these, in conjunction with the churchwardens, had to provide employment, and, when necessary, assistance in money for the indigent. In order to raise the necessary funds, the Overseers were empowered to assess for the poor-rate each householder in the parish, according to his income out of his property in the parish.

Analogous provisions were made for the maintenance of the public highways, so important for the communal life. The law for the regulation of Highways established the office of Surveyor of Highways, and graduated the communal burden according to the ownership in land and wainage, the working-days and manual labour, rates similar to the Poor-rate being levied for repair and maintenance. Through these institutions the parish attained a vigorous position, in which the question of ways and means was already in the ascendant. From this duty of contributing to rates was derived a local right of signifying assent under control of the Justices of the Peace. In the same connection was established a system of parochial assemblies (Vestries) to determine the economic affairs of the communal administration.

But the main purpose, it might almost be said the providential mission of the dynasty, was the settlement of the *Reformation*, and the establishment of the Anglican National Church, which, begun by Henry VIII. through personal motives, was enforced with unparalleled resolution and severity. Since the nation had again begun to feel its unity under a settled dynasty, the insular dislike of the Roman Primate was revived in more intense form than ever. In England it was at first a sentiment of national independence, which asserted itself against the dominion of a universal Church. But the German Reformation originated mainly from an intellectual movement, and from a conviction as to the fallacy of Roman Catholic doctrine, which reacted only in a secondary way on the State. The Reformation in England was, in fact, at the outset, a national political act of State, which only gradually sank as a spiritual

movement into the heart of the people.\* As the Roman Church became secularised in her worldly possessions and civil institutions, she also became an object of attack on this outward ground in her temporalities and her supreme head. Thus the rejection of the Roman Pontiff's supremacy became the next object of State policy. Accordingly, the measures of Henry VIII. were mainly directed towards effecting a transformation in the relations of the powers, whence followed the direct subordination of the Bishops to the Royal authority, the

\* The events attending the English Reformation nevertheless proceeded on lines in many respects parallel to those of the Continent. The system of authority, which, in the Middle Ages, kept State and Society together, must have been terribly dislocated at a time during which six Popes abdicated, two were assassinated, and one was mutilated; when two, who were formally chosen, drove each other from Rome in turns; when the Papacy in Italy caused crusades to be preached for their private feuds and the enlargement of their territorial possessions; when, in France, a child of five years was created Archbishop of Rheims, and so forth. Upon the state of thought in England, the seventy years' exile of the Papacy in Avignon had a lasting after-effect. Thus had gradually been developed a strained feeling, in which the Church became for the people an outward institution, and for the higher classes an object of aversion. The office of mediation, which the Prelates had so nobly assumed at the time of Magna Charta, was well-nigh banished from memory. The higher clergy had, for a long time, ceased to act as mediators, but in the political party strife had become rivals for high places. At the zenith of its power the prelacy began in England also to be occupied by members of aristocratic families, while the spiritual functions of teaching and the cure of souls were left to badly-paid Curates, and social intercourse with the working-classes to the religious orders. The Church revenues had been so far diverted from their proper uses that, when they were afterwards secularised, they were found to be already mainly devoted to worldly purposes. For that very reason the Church had completely lost all influence during the Wars of the Roses. Nevertheless, she considered it her exclusive province to discharge the civil duties bearing on the general well-being and education, while the laity itself now possessed the insight, the will, and the means to carry out such aims and purposes. After the reasons

wholesale secularisation of monastic property, and its transference in free grant to powerful temporal lords ; the exclusion of all papal influence, and, as a consequence, the assertion of the King's Spiritual Headship of the English Church, a position sanctioned by the penalties for High Treason pronounced against recusants. And all this was done with the assent of a willing Parliament, subordinating dogmatic teaching which, in the Six Articles of Gardiner, with but slight variation from Roman dogma, restrict the reading of the Bible "to people of condition."\* The complete estrangement into which the Roman Church had fallen

had gradually disappeared which had led the Church to emancipate herself from the supreme authority of the State, in order not to lapse into the disintegration and rudeness of the feudal system, she clung all the more firmly to such emancipation, as a right and privilege purely hers, and this led to the clergy being exempted from punishment, even in cases of public crime and breaches of morality, through the forbearance of members of their own order. When, towards the close of the Middle Ages, new regions in the spiritual and material world were opening out, the Church claimed that the intellectual life should remain by the old landmarks, because the clergy themselves were unable to follow in such tracks of progress. Hence, even after her moral influence had been profoundly shaken, the Church still retained possession of all her temporalities and prerogatives, which in human societies still survive for a time, even after all intrinsic claims to their possession have disappeared. Exactly at that time (1401) occurred the first instances of the burning of heretics. This it is that presents the eternal contradiction whence originate the great reforms of the State, or, failing these, the Revolutions.

\* Ranke, "*Eng. Geschichte*," I. 224: "One finds in Henry VIII. no true affection, no impulsion of the soul, no real sympathy with any living being ; men are to him mere pieces of mechanism which he makes use of and then shatters. But he was endowed with an intelligence beyond compare, a powerful capacity adaptable to all interests ; he united versatility of views with a will at all times steadfast. One follows the track of his reign with a mingled feeling of horror and admiration."

at the very zenith of her power had, doubtless, already affected the whole Catholic world, involving the Papal See in a series of intrigues and contentions with the great European Powers, removing the former solidarity of Catholic sentiment against heresy and thereby affording free scope to the aims and endeavours of the Reformation. Nevertheless the aspect of the English Reformation at this stage contained much that was deeply offensive to the religious feeling of later generations.\* In this Dynastic Reformation, it is not merely the temper of a despot that prevails, but a kind of anticipation of the system of "Richelieu," which, in compliance with well-considered reasons of State, always strikes down the leaders of the opposition, so as to stem the "contagion." When, in the first period of the Reformation, resistance was manifested by the religious orders, it was resolved, after protracted deliberation in the Privy Council, to hang the Prior and three Monks of the Charterhouse in the robes of their order, *coram populo*; whereupon the Clergy yielded. In the second period, the axe of the headsman again fell at once upon the heads of Lord Chancellor Thomas More and Bishop Fisher, leaders of the resistance. Later on there occurred from time to time single executions in the shires, at "fitting places" and at "fitting times." The execution of two queens, which

\* The wording of Statute 25 Hen. VIII., c. 25, places this national aspect in prominence: "This your Grace's Realm acknowledges no superior, next to God, saving your Grace only; it was, and is, free from any subjection under the laws of any man, saving under such as established are within this kingdom; but not for the following of laws of any foreign prince, potentate, prelate," etc.

happened in connection with the Reformation, was carried out with the strict formality of legal process and judicial sentences. It was also for reasons of State that the most faithful and successful servant of the King, Lord Thomas Cromwell, was sacrificed to the hatred of the Clergy and the Nobles. In fact, the King's political foresight succeeded in localising, and thus easily quelling, the civil commotions resulting from the Reformation. But a Reformation brought about with so much worldly wisdom could not exempt the English nation from the earnest striving after the loftiest truths affecting mankind, but only postpone the struggle to a later generation. Hence such a system could only terminate in half-hearted and vacillating measures at the close of this reign, conformably with the everlasting truth, that no man should assume the office of Reformer in spiritual things without a heartfelt conviction of his mission.

This dogmatic Reformation, under Edward VI., undertook to supply this hitherto lacking inner aspect of the movement. Such a solid and durable foundation for the spiritual structure could proceed only from earnest convictions, which, themselves grounded on Holy Writ and quickened by the steadfastness of their champions, might by the force of moral truth gradually sink into the heart of the people. The spiritual founders of this Reformation were Ridley and Archbishop Cranmer, whose character, despite an irresolute temperament prone to submission, leaves no doubt as to their righteous intentions. The Regent Somerset and the youthful King himself were animated by kindred sentiments, so that through genuine conviction there was

now established the fundamental Protestant doctrine of justification by faith, of personal moral consciousness and responsibility, through which man may find the inner peace without priestly mediation. The Book of Common Prayer remains a lasting memorial of the national sentiment of the time, "of its learning and refinement, moderation and decision" (Ranke). The differences in doctrine in regard to the Sacraments, the abolition of Confession and celibacy, reform of the ritual and liturgy, are set forth in the Forty-two Articles. But it could not be gainsaid that, after all that had been accomplished, the majority of the people considered that there had been a change of rule rather than of religion. Henry VII. himself had threatened any denial of Transubstantiation with the penalty of death, and innovations in ritual and liturgy are at all times unpopular. The mass of the population had been taught other doctrines of faith; many were troubled in their conscience, while others were impelled to further extremes. Amongst the wealthy classes, the stake they possessed in the newly-acquired secularised property of the Church contended with political misgivings towards the innovations. This confusion in the general mind coincided with hard times of need, which required a strong controlling hand. At a time when a kind of Royal dictatorship was urgently demanded, there stood at the head of affairs a feeble ruler, whose inclination was greater than his capacity for personal government. The unfortunate management of foreign affairs was further complicated by the still more serious state of the interior. A return was made to a heedless aristocratic



government, which embittered the rural populations by its encroachments on the commons for the benefit of the landlords, by pressure exercised in manifold ways on the yeomanry farmers and the working-classes, coincidentally with the prevalence of famine and epidemics. To all this was added the high-handed confiscation of the property belonging to Hospitals and Guilds, and the dishonourable alienation of many of the Crown domains in favour of the actual holders of power.\* The work of the Reformation was thus once more thwarted by worldly interests, in a way detrimental to both alike, and in an unhappy hour were revived the intrigues of party rule by the nobility. The Duke of Northumberland, who had rapidly attained to a position of eminence, in his restless ambition hurried the Regent to the scaffold, himself assuming the Regency, with the ulterior view of bringing the succession to the Throne into his own family.

The Catholic Restoration under Mary becomes intelligible in the light of the actual political situation. During the selfish Council of Regency, established at the death of Edward VI., no man, family, or party was to be found worthy of the public confidence. To the youthful Jane Grey, "Queen of Nine Days," adhered the bloodguiltiness of her father-in-law, Northumberland. Hence the well-grounded conviction of a need of monarchical order pointed almost unanimously to the legitimate heiress to the Throne, the sorely-trying

\* Froude, V. 128, shows that at this time the expenditure of the Court rose from £14,000 to £100,000, and that Crown-lands of the value of £500,000 had, by grants, sales, and exchange, been squandered away, a third at least of the value sticking to the fingers of the ministers' favourites.

daughter of Henry VIII. In the newly-elected Parliament the adherents of the Papacy doubtless still constituted a dwindling majority. But a majority, to which the doctrines of faith still remained an open question, sacrificed the Reform of Edward VI. to the wishes of the Queen so recklessly, that the decidedly Catholic tendency already acquired the upper hand in the Second Parliament, to which the Sheriffs were specially enjoined to return men "of the wise, grave, and Catholic sort." The Second House of Commons joined with the Lords in presenting a petition, which, in deep contrition, "by reason of the past proceedings against the Holy Father," declares its readiness to cancel the Acts of Parliament directed against the Pope, "with the condition that he will ratify their acquisitions of abbey-lands and foundations." It has been computed that 40,000 families were interested in this question of ownership. At this cost the subtle-minded assembly left to the Queen and her fanatic councillors full scope to re-introduce Courts of Heresy against the leaders of Protestantism, whereby 284 persons were burned, amongst whom Archbishop Cranmer, four Bishops, twenty-one parochial Clergy, and many women and children.\* The abolition of the Royal Supremacy, the re-introduction of Celibacy and

\* Religious partisans are always wont to present the martyr-ology of the other side alone. True it is that this Reformation numbered 191, according to others 222, Catholic martyrs, without counting amongst them, however, any women and children! But, as compared with Elizabeth, let it be recollected that according to Father Paul, fifty thousand, and, according to Grotius, one hundred thousand, Protestants had been hanged, beheaded, buried alive, or burned by Charles V. in the Netherlands, not to mention the Bartholomew night, and other horrors.

the Catholic Eucharist, were passed through Parliament without difficulty, and without encountering any opposition on the part of the House of Lords, while 1500, or, according to other accounts, 3000 clergymen were deprived of their benefices. From time to time the unhappy woman on the Throne trusted to see her hopes of an heir to the Crown fulfilled through such devout offerings to Heaven. The third "Reconciliation Parliament" offered to the world the spectacle of the Lords and Commons on their knees, humbly acknowledging their sin of spiritual defection, and receiving absolution from the hands of Cardinal Pole. Thus had the worldly-wise party retraced its step back to the Papacy, although certainly at the same time effacing itself in the esteem and confidence of the nation. For England, the Protestant Church, the martyrdom of her Bishops, women, and children, accompanied by the dread concomitants of the Spanish Inquisition, had been a period of inner purification, and under this reign the English Church first became really established in the hearts of the people.

In the Anglican State Church, under Elizabeth, were at last reconciled the inner and outward aspects of the Reformation. Under Elizabeth the monarchy once more rose to its full splendour. The spirit of the Roman Church having revealed itself to the people in such lurid colours, Elizabeth, from conviction, and with a clear understanding of her vocation, re-established her father's Royal Supremacy and her brother's work of reform by one great act. The resolute action of the Queen was soon sustained by the sanction of Parliament in the Acts of Supremacy and Uniformity, 1 Elizabeth,

c. 1, 2. In the Upper House only nine temporal Peers and nine Bishops voted against the Book of Common Prayer. Of 9,400 Clergymen, only 189 found themselves compelled to relinquish their benefices in England. Winnowed by hard trials, strengthened by adherence to their religious convictions, enlightened by individual searching of the Bible, no longer withheld from the laity, the Protestant faith now struck deep root in the conscience of the nation, receiving, through Prayer Book, Liturgy, and Ritual, a mode of worship suited to the understanding of the people, and therewith the possibility of setting up anew *one* Church in *one* State. The Anglican Church henceforth ceased to be a political State-organization, but, with an honest evangelical belief, has become constituted as a Church, with firm intent to live in a right and Christian manner. Thereby the position of this ecclesiastical system was henceforth determined in its relations to the Protestantism of the Continent, with which Elizabeth now entered loyally and steadfastly into alliance, as a bulwark against the powerful coalitions of the Catholic world then in course of formation.\*

By the Acts of Supremacy and Uniformity, the Protestant Church was now declared the Constitutional

\* For the history of the Reformation, Burnet's "History of the Reformation," 1681, 3 vols. fol., notwithstanding its partial spirit, is still a standard work of reference. Important modern works are Vaughan, "Revolutions in English History," vol. ii., 1861; and, above all, J. A. Froude, "History of England from the Fall of Wolsey to the Defeat of the Armada," vols. i.-xii. From among the abundant material I may specially mention the "Trial of Ann Boleyn," vol. ii., c. 11 and App.; "The Character of Henry VIII.," vol. ii., c. 24; "The Trial of Mary Stuart," vol. xii., c. 69.

State Church, "by law established," and the people members by legal right of this Church. The Royal Supremacy has become a necessary preliminary condition of the Constitution, with very far-reaching consequences for the outward life of these people, as may already be recognized under Elizabeth's reign. With the Royal Supremacy the whole scheme of Roman Church-government was transferred to the prerogatives of the Crown in temporal matters. As highest ecclesiastical authority, there was constituted a High Commission Court. The Archbishops and Bishops retained the traditional powers of Church government and jurisdiction, but subject to the King as regards their nomination and continuance in office, as holders of offices of trust under the Crown. This bureaucratic condition deprived the synods of the clergy of their former independence. With the religious orders and cloisters the strongholds of Church influence disappeared, while the secularization of ecclesiastical property equally impaired their power as a landed interest. The Parish clergy alone still remained connected with the landlord class through their patronage of Church livings, and with the local districts (parishes) through the ecclesiastical tithes and the Churchwardens. To this hierarchical body of functionaries the whole of the Laity were now subjected in Church matters. Through the Reformation the former spiritual subjects of the Church now entered into like relations to the Crown. To the temporal Oath of Allegiance was now added the spiritual abjuration of the Papal power being made the duty of the subject, and its violation, High

Treason. After the establishment of the Reformation there accordingly began, after the manner of traditional Church rule, a twofold persecution, of the "Papists," as well as of the Protestant dissenters, a persecution doubtless less sanguinary and violent than under the older rule, but more irksome and vexatious.\*

In this movement of the period, and amid such surroundings, it is alone possible duly to appreciate the relation of the Parliament to the Royal Government.

**I.—THE PERMANENT COUNCIL, NOW STYLED "PRIVY COUNCIL,"**

had, since the withdrawal of the nobility from the control of affairs under Henry VII., reverted to its original position. As in the fourteenth century, it again became the deliberative body for the conduct of the affairs of the Realm, and, as such, an expression of

\* The civil regulations of Elizabeth have, in later times, been criticised from a constitutional standpoint, without considering that, from the outset, the ordinances had and have retained a concurrent power, as binding principles of administrative law. But even when judging of the facts, it is often not taken into account to what degree the Government of Elizabeth was threatened from within by "Popish plots," and from without by the hostility of the Catholic powers, during those periods of violent counter-reformations, the assassination of the Prince of Orange, the virulent persecution of Protestants in the Netherlands, in France, etc., when Pius V. not only encouraged the insurgents, but by a bull excommunicated the Queen, deposed her, and released her subjects from their oath of allegiance. Further, the execution of Mary Queen of Scots bears a different aspect when considered from a historical rather than from its dramatic point of view. Mary Stuart was living on English soil, in the quality of a private person, and was clearly condemned, by legal process, of High Treason. Elizabeth steadfastly opposed the carrying out of the sentence, till assent to it was wrung from her by her ministers, and thereupon it was forthwith proceeded with, these measures being considered in the Privy Council as

the Royal will, independent of Parliament, or, rather, became the State rule standing above Parliament. Elizabeth (10th April, 1593) gave this clearly to be understood in the rebuke of the "irreverence" shown to her Privy Councillors, who were not to be treated as ordinary members forming a Council only during continuance of Parliament; whereas those standing Councillors were summoned to the Council of State, both for their wisdom and their great services. The reigns of Henry VIII. and Elizabeth constituted to a certain extent the normal period of the King's Council, in its character as a deliberative body, and initiator of the most important measures in relation to the Reformation.\* Its enhanced significance was brought

being indispensable to guard against the persistent conspiracies which never ceased during the whole time of her imprisonment (1568-1587). Parliament, which, in like manner, considered these measures necessary, at the same time declared that this act should not prejudice the succession of the son (James I.), who himself subsequently signified his agreement in the sentence of his mother. (Comp. Ranke, I., 380 pp.)

\* The greatly-increased importance of the body of officials in the Privy Council is characteristic, as, for instance, in the law of precedence of Henry VIII. the instruction that the Chancellor, when a Peer, takes precedence of Dukes. The gross abuse displayed by both sides of the laws against High Treason, and the frequent employment of the same in the Wars of the Roses against each branch in turn of the Royal Family, led to the Statute 2 Henry VII., which declares allegiance to a "*king de facto*" as lawful. If royalty was thus recognized as an institution, the Council now stands forth as a judicial Committee in the fullest sense, and the body of officials as servants of the Law, who have, first and foremost, to discharge fealty towards the King, by yielding obedience to the *laws* given by the King. The order of precedence of the officials, the numerous regulations concerning matters of business in relation to the State Council, the use of the Great Seal, etc., display an organization of the departmental system which, up to this measure and degree, was hitherto unknown to the Middle Ages.

more prominently into evidence in its exceptional criminal jurisdiction, which, as a Royal right reserved in the previous period, had often been questioned by Parliament, but had ultimately been always again recognized. At an earlier period the after-throes resulting from wild party conflicts, and the overbearing arrogance of the nobles and their retainers, had called for a stern police control under Henry VII. The chief Judges had plainly declared to the King that they were unable, under existing conflicts of faction, to administer justice at their Assizes. "By reason of existing great tumults and unlawful assemblies, briberies, and favourings," the Statute 3 Henry VII., c. 1, empowers the Chancellor, Master of the Exchequer, and Keeper of the Privy Seal, together with one Bishop, one temporal Lord of the Council, and two Judges of the Realm, under order from the King, to bring individuals under inquiry, and to punish, on account of seven specially-named breaches of public order. The King declared therewith that he would make use of his prerogative of punishment only according as the wants of the time demand, and, in that intent, delegating for this purpose a restricted number of Privy Councillors, to act in conjunction with two Judges. Henry VIII. continued this arrangement in its essential features. But in the second half of the sixteenth century there supervened the Reformation, with its radical encroachments on clerical authority and clerical possessions, leading to high-handed measures, such as are ever inspired by the spirit of persecution springing from religious conflicts. On that very ground there existed a tacit understanding between Council and Parliament about the "opportune"



extension of such administrative justice. From the place where its official sittings were held this Court took the name of the "Star Chamber," and from its constitution it was only too calculated to play an ill-omened part in the subsequent period.

The Reformation superadded to the Privy Council yet another institution, analogous to the State Council, namely, the High Commission Court. The first execution of the outward measures connected with the Reformation had doubtless been entrusted to a duly-qualified representative of the King, in the person of his Vicar-General, Cromwell. But after this was accomplished, it seemed necessary to delegate certain of its functions of supervision and jurisdiction to an organized body. Hence, by the Supremacy Acts of Elizabeth a High Commission was constituted under Patent from the Crown, and this Court may be regarded as complementary in spiritual matters to the Privy Council in temporal matters. It thus corresponded to the Consistorial system of Germany, whereby through a mixed body the harmony between the temporal and ecclesiastical rule was realized. The aim and purposes of the first Commission (1559) was (with a view to stave off the Catholic restoration) a "General visitation" of all churches, with power of suspension and deprivation of ecclesiastics. Subsequently the High Commission Court received the further inquisitorial authority, "as heretofore" (hence without intervention of a jury), to proceed against heresy, abuses, and defections in religious matters, and to inflict fines and penalties. At the height of its jurisdiction this body comprised forty-four Commissaries, among whom were twelve

Bishops, a still larger number of Privy Councillors, and other ecclesiastics and civilians.\*

#### II.—THE UPPER HOUSE OF PRELATES AND BARONS

is continued, in the time of the Tudors, in an "Estate" of the Realm. To his first Parliament Henry VII. had doubtless summoned only twenty-nine temporal Lords, amongst whom many newly-created nobles. But other great Lords were afterwards restored to their rank, and partly to their possessions, and down to the death of Elizabeth the temporal Peers were moderately increased in number, so that the Earls at one time numbered nineteen, and the Barons on one occasion as many as forty-one. With them were also usually found associated two or three Dukes, Marquises, and Viscounts. In these nominations the Tudors restricted themselves,

\* The High Commission Court was not at any time popular, either amongst laity or clergy; for the narrow tendencies it showed itself too cautious, and for the more liberal minded too severe. Yet such an organization was doubtless justified. For when the abstract separation—in other words, the ascendancy, of the Church over the State—comes to an end, when Church government and temporal government carry on their mutual conflicts within the State, under the paramount authority of the monarch, neither a body of clergy (or even an Ecclesiastical Parliament), nor a body of jurists, will then suffice, but there will be needed a mixed Committee to determine the points at issue, which might otherwise lead to serious conflicts between Church and State, and to violent strife amongst ecclesiastics themselves. Since the entrance of Christianity into the life of States, human wisdom has never yet succeeded in devising a system of State constitution and administration, and still less any scheme of union or of separation, which might satisfy the claims of the Church, as such. In this respect also the action of Elizabeth was praiseworthy, and the present time may perhaps feel more inclined to approve of her conduct in endeavouring to find, in the vexed question of the ritual, a golden mean between the too sensuous spirit of the Roman ceremonial, and the too frigid service of the Protestant Church.

with scarcely any exceptions, to the more ancient aristocratic families. After the collapse of the Military power of the great Barons, the Upper House reverted, in some degree, to the state of things prevailing in the fourteenth century. The State central authority rested again in the Privy Council, while the influence of the Peers lay in their appointment to the great offices. Precisely in this brilliant nobility, now recognized as hereditary, were found the pliant majorities both for the violent acts of Henry VIII., and for the several religious changes under Henry, Edward, the Catholic Mary, and the Protestant Elizabeth. If an ancient nobility finds it difficult, in the immediate surroundings of a Royal Court, to withstand the despotic or unwise proceedings of their sovereign, how much harder must this have been for a newly-created and newly-endowed nobility, when confronted with a masterful yet popular monarch, who seemed specially called to carry out the highest mission of the times? And in this connection it is also noteworthy that Henry's deeds of violence were mainly directed against the favourites elevated by himself, while towards his temporal Peers (among whom were several who had been under his personal wardship) he otherwise behaved as a kindly, bountiful, and devoted master. The "fall from their high estate" of this recently overbearing class was nowhere more conspicuous than in the fact that their hard-fought right of special jurisdiction in their own behalf became for them a most baneful privilege. Instead of the ordinary procedure of the Courts, Henry had recourse to Bills of Attainder, whereby he was enabled under legal form to condemn his fallen favourites. Placed between

a stern, unbending Royal will, and an assenting majority of the Commons, the hereditary Peerage no longer ventured to interpose any opposition. Of decisive importance at this juncture was the Reformation, by which was swept away a compact element of twenty-seven regularly-summoned Abbots and Priors. In the Parliament of 1532 there appear only twenty spiritual Lords, side by side with forty-one temporal Peers, reversing the ratio of votes which prevailed in the Middle Ages. For nearly a century the nobility ceased to represent the rights of the people.

#### III.—THE HOUSE OF COMMONS.—LOWER HOUSE.—

had, as far as concerned its constitution, passed with least modification from mediæval times to the Tudor period. Some additions to the number of representatives occurred from the fact that, under Henry VIII. twenty-seven members for Wales were added, and four also for the County Palatine and Chester ; still more from the fact that a number of older electoral boroughs were revived and others newly summoned : under Edward VI. twenty-four ; under Mary twenty-four ; and under Elizabeth thirty-one more boroughs. Notwithstanding the greatly-increased power of the Crown, the Commons felt that they were placed on firm ground, in respect of the ever-increasing demand for supplies. The public life of the land-owning class, and its influence in parliamentary elections, was now centred in the military and police administration, in which the wealthy classes were now more closely brought together. On the other hand, the number of the yeomanry had also again been increased since the time of Henry VII., through

the secularisation of monastic property, through the right of alienating ownership in land, and free testamentary power. The urban middle-class increased through the expansion of Trade and the industries, favoured by the fostering care of the guilds, trade associations, and companies.\* An indirect acknowledgment of the growing importance of the Commons is found in the circumstance, that at important crises the Crown now sought to exercise an influence over elections. Such an influence had already been sensibly felt during the Reformation Parliament. In 7 Edward VI. the Sheriffs in the different counties were enjoined to return certain persons pointed out by the King. In 2 Mary there was, on the other hand, issued the already-mentioned injunction to return "Men of the wise, serious, catholic sort." The number of Court officials and other dependent members was very considerable under Elizabeth, her most influential ministers, as members of the Household, taking an active interest in the debates. The addition of 100 Burgesses, mostly dependents under Henry VIII.'s successors, had undoubtedly for its object to control the right of voting in the interest of the Crown. A further symptom was that already persons not within the electoral district frequently endeavoured to become members for Parliamentary

\* According to the most recent researches of Rogers, "History of Labour" (1885), the first half of this period was also very favourable to the position of the working-classes, by reason of the unusually high rate of wages, as compared to the low price of provisions. The latter half of the period, however, took an unfavourable turn, less on account of the dissolution of the monasteries as by reason of the confiscation of the revenues of foundations under Edward VI., and the debasement of the coinage from the time of Edward III. to Edward VI. But this last ground of difficulty was undoubtedly made good in the seventeenth century.

boroughs. In the year 1546, the son of the Earl of Bedford affords the first example of the heir to a peerage trying to obtain a seat in the Lower House, a precedent which at all times found numerous imitators.

The Lower House, thus strengthened, now appears firmly established in its Constitutional position in all its three fundamental functions of legislation, assent to taxes, and administrative control.

(1) *Parliamentary legislation* was at once ushered in under Henry VII., by an Act which recognizes the title of the Crown, or rather creates it anew.\* The succession to the Throne for all five rulers of the House of Tudor is based on parliamentary enactments. The work of Reformation, in all its main details, was carried through by Resolutions of the Continuous Parliament, summoned on the 23rd November, 1529,

\* Henry VII. descends from a Mr. Owen Tudor, and through a marriage which was only subsequently declared valid under Richard II.—a declaration withdrawn, however, under Henry IV., and specially restricted by a clause to the effect that no succession to the Crown should result from such descentance. Parliament accordingly, when acknowledging Henry VII., makes no kind of reference to an hereditary claim, but simply affirms that Henry VII. is to be and remain King. Under such circumstances, his marriage with the heiress of the House of York was assuredly of immense importance. But the two descendants of the House of York who survived the Wars of the Roses (Warwick and Suffolk) continued to afford pretexts for ever-renewed insurrections, and were executed in 1499 and 1513 respectively. Under Henry VIII. the lack of an heir male to the throne became one of the chief reasons of his complicated matrimonial affairs. The life of his successor was, from the outset, regarded as being so precarious, that he made, by virtue of a power conferred by Act of Parliament in 1537-1544, testamentary provisions which savoured greatly of arbitrariness, and were rendered still more involved by reason of a confused will of Edward VI., made in his fifteenth year, and drawn up under ambiguous circumstances, so that the succession of Elizabeth necessarily remained a grave problem.

up to April 1536 (with many prorogations), and in fact chiefly by "motions" of the Lower House. All the subsequent Acts of Supremacy and Uniformity were in like manner sanctioned by Resolutions of Parliament. The dynasty could no more dispense with the co-operation of Parliament in relation to the work of Reformation, than could the ruling German princes dispense with their Diets. The century of the Tudors was more parliamentary than any preceding, in so far as Parliament never had to deal with questions of greater moment. If anomalies seem to be discovered in its proceedings, these again disappear when proper distinction is drawn between legal, administrative, and ecclesiastical legislation.

For the enactment of laws the maxim respecting the necessary *consensus optimatum* was now firmly established. Under none of these reigns was any attempt made to change, by means of ordinances, the civil or criminal law, or the legal procedure. The questionable Statute Henry VIII., c. 8, which assigns to Royal ordinances the power of law, contains the express reservation in regard to legal enactments, "That hereby none be aggrieved in his possessions, freedom, or person, nor that the laws and customs of the Realm be thereby reversed."

In the province of *administrative measures* the undisputed right remained to the Crown to issue ordinances, provided no parliamentary statute had already pronounced upon the matter. Hence ordinances were issued, in many respects with Constitutional binding force, corresponding with the requirements of the time. Wherever such ordinances were at variance with

parliamentary laws already existing, the Crown was empowered, by express enactment, to issue them. The sweeping and somewhat questionable Statute 31 Henry VIII., c. 8, was issued only in order all the more surely to enforce certain ordinances bearing on religious matters, but was very soon (in 1 Edward VI.) repealed. No doubt projects of law emanating from the Crown were, according to the existing relations, generally accepted. When, however (1532), the Lower House threw out a Bill, Henry sulkily gave way, but without taking further action in the matter. Several examples of the kind happened under Edward, Mary, and Elizabeth.

The situation was very peculiar in regard to the *Church legislation*. Down to the close of the Middle Ages the interference of the Commoners in the internal administration of the Church, as also in regard to the levying of taxes on the temporal possessions of the clergy, was energetically repelled. The right appertaining to the Church of issuing provisions in regard to such matters was already, by the Act of Supremacy, diverted to the Crown, so that from the year 1534 Convocation was barred from issuing any binding provisions, even in respect to the clergy, without leave of the King. As was formerly the case, when the Christian Church was introduced into the Roman Imperial State and into the Germanic kingdoms, now also a solemn legal act was needed in order to recognize the reformed Church as the lawful Church, and the Royal Supremacy as the rightful governance for the Church, an endless chain of political and individual legal relations depending on such recognition,



Hence the extension of parliamentary legislation to the fundamental Constitutional law of the Anglican Church.\* But once this legal groundwork was established, the Crown again assumed the right of issuing ordinances, with the advice of the ecclesiastical authorities, and claimed this right in as wide a measure as did the old Church government within the Roman system.

(2) *The right of a parliamentary assent to taxes* remained equally undisputed. Since Henry III., tonnage and poundage were certainly granted to the King for life, and thereby the hereditary Crown revenues were so far strengthened as to be able to cover current requirements, even without subsidies. At the same time the right of assent pertaining to the Commons had during two centuries become so deeply rooted that both Henry VII. and VIII., on the first attempt at setting it aside, evoked dangerous opposition.† The

\* Those ultramontane writers are either mistaken or guilty of misrepresentation who assert that Protestant doctrines and Church organizations are dependent merely on the dictates of the monarch, or on a majority of votes in Parliament. The dictatorial decrees of Henry VIII., 1531, were agreed to by the Convocation of the Clergy, "so far as the law of Christ allows." The severance from the jurisdiction of the Roman See (1534) was resolved on by "Convocation." The Reformation Acts 2 and 3 Edward VI. were confirmed by a committee of Bishops, and sanctioned by Parliament. The Thirty-nine Articles of Elizabeth were settled in 1563 by "Convocation," and first sanctioned by Parliament in 1571. Further, the Declaration of the Supremacy of Elizabeth is drawn up so cautiously, omitting the words "Head of the Church," that it does not contain any decision made by the Queen in doctrinal matters.

† When Cardinal Wolsey, in 14 Henry VIII., appeared in Parliament, with great pomp and circumstance, to propose an assent to a grant of money, he had to be reminded by the Speaker that his coming thither was neither suitable nor in accordance with the ancient liberties of the House. With equal boldness the Speaker Onslow reminded Queen Elizabeth, on occasion of

Parliaments of Henry VIII. showed themselves, as a rule, so yielding, that this King is said to have raised more subsidies than all his predecessors put together. And what Parliament did not allow directly it tolerated indirectly, by certain administrative abuses (in other words, so-called "benevolences") which, by the Council, by special Commissaries, or by appointments in the militia, were rigorously exacted from capitalists. This kind of forced loan (with or without declared intention of repayment), begun under Edward IV., was renewed under Henry VII., with the indirect assent of Parliament, and was afterwards frequently resorted to, especially in the years 1491, 1506, 1525, and 1544. But precisely in this very abuse there was implied a virtual acknowledgment of the right of assent to the subsidies.

(3) Lastly, *a control of the State administration* was assured through the right of assent to the taxes, and through the share taken by the Lower House in legislation. It was also occasionally exercised, through public complaints raised against fiscal and other abuses; and, since the Reformation, through innumerable complaints connected with various religious matters. But at all times this power of Parliament was dependent on the tendencies of the period. If, in the previous century, it had often gone beyond all limits, it now just as frequently fell short of its legitimate rights. But in this respect

an address presented during a time of exceeding loyalty, "that it did not pertain to the high prerogative of the Crown to levy money from her subjects according to her own free will." In spite of her parsimony, Elizabeth found it necessary to obtain, in eleven sessions of Parliament, nineteen subsidies and thirty-eight fifteenths.

there was a far greater lack of will than of power. Like the Upper House in its condemnation of disgraced favourites, the Lower House showed itself at times more loyal than the King himself, in the granting of enforced loans, and the punishment of "irreverent" opposition. During the ebb and flow of the Reformation, the significance of parliamentary complaints took exactly an opposite direction. Instead of guarding against the abuse of State power, the Parliaments were so subservient that, under Henry VIII., a despotic self-will under Edward VI. the passion of faction, and under Mary religious fanaticism, knew no better means of counteracting opponents than by securing a majority in Parliament. The inflated, abject language of the Lower House belongs, however, in other respects, to the style of the period, while insensibility to wrongs inflicted on private citizens seems to be a special characteristic of epochs of religious strife.\*

On the other hand, an advance in parliamentary rights is shown in the fact that on one occasion the Lower House (1586) carried through its decision in

\* To the inflated language of the Parliamentary debates, a reflex of the time, historians have attributed overmuch importance. Certainly the addresses of the Speaker at this time lasted for hours, abounding in endless eulogium and flatteries of the Royal puissance, wisdom, and perfection. Henry VIII. was, in their eyes, an Absalom in beauty, a Solomon in wisdom, etc. At mention of his "sacred Majesty" (a designation first employed under Henry VIII.) the whole assembly rose and repeated the words with profound reverences. But what is to be said, when, in conformity with the spirit of the time, the University of Oxford is found in the same breath eulogising Henry VIII., Edward VI., Mary, and Elizabeth, on account of their devotion to the Church?

the matter of a contested election, even against the express injunction of Elizabeth to the contrary. So also, in the recognition of certain personal rights ("privileges") of members, which were now derived from their position as members of the "highest Council of the Crown," after an equality of right had been substantially established between both Houses. In 4 Henry VIII. a local court had committed a blunder in pronouncing a penal sentence against Strode, a member of the Lower House, on the ground of certain Bills introduced into the House. On proposal of the Commons, it was unanimously declared by both Houses, jointly with the King, that such proceeding of the Court was null and void, with the addition that "all suits, sentences, executions, fines, penalties, and so forth, which against Strode, or any other member of the present or future Parliament, shall be brought or threatened, shall be treated as null and void." Also the first case of the enforcement of its penal power under Henry VIII. occurred when the Sheriffs of London were cited before the House and committed to prison for having dared to arrest one of its members. In the same way, in 35 Henry VIII., the Privilege of the House was acknowledged as against an order of imprisonment on the part of the Council. The attempt to exclude a member by means of a Royal order from the sittings of the House (1571) was also set aside. But this notion of the Commons being also "members of the Council of the Crown" had certainly its inconvenient side, inasmuch as the King could assume a claim to exercise a kind of disciplinary power over the members of "his Council," even as in previous

generations had been asserted against the Judges of the Realm, as being justiciars of the Council. As a protection against such a consequence, it became customary, from the year 1541, for the Speaker of the Lower House, at the opening of the Session, to claim from the King "freedom of discussion, free access to the person of the sovereign, and freedom from civil arrest;" and soon after the Lower House, with a true insight into the relations, began, of itself, to punish excesses of its members by fine and imprisonment. Nevertheless Queen Elizabeth was not prevented by this consideration from imposing imprisonment, by way of mandate, in individual cases personally offensive to herself. In the year 1593, the Lord Privy-Seal, Pickering, in reply to the customary request of the Speaker for freedom of speech, even declared, by command of the Queen, "that the privilege of the House consists therein, yea or nay to answer, but not to speak what to them seemed good, nor to say what came into their head." Under the Stuarts many serious conflicts arose from these strained relations.

As regards the outward conduct of business in both Houses, at this period, and especially since the Reformation Parliament, a change was introduced, whereby the proceedings of the Parliament, once summoned, were prorogued from year to year. Even under Elizabeth, it was considered customary to prorogue the same Parliament for longer periods, and to resume business in repeated sessions with the same body of members.

The Parliaments were consequently at this period in a normal condition, as was also the case with the

German Diets during the Reformation period. The courage and power of will common alike to the men and women of the House of Tudor had established on a clear understanding the mutual relations of the Crown with its Parliaments, while the monarchy employed its re-asserted power in Royal fashion for the advancement of the intellectual and material development of the people, with the ready co-operation of Parliament. The extraordinary powers of the Prerogative, bequeathed to the Crown by the Middle Ages, found their consistent application in the great work of Church reform. At the same time all apparent anomalies in this attitude of the monarchy may be traced to the influence of the Reformation. The majority of the people sought and found in this dynasty the advancement of their interests through the administration, and the gratification of their national pride through the Reformation. A good understanding with the Commoners, despite heavy wrong done to individual members, prevailed throughout the whole of this period. Characteristic of the times is the incident (44 Elizabeth) wherein the Queen, after a debate lasting six days, removes the abuse connected with the granting of monopolies, calling God to witness "that never in my heart has thought prevailed that had not the welfare of my people as its aim."

## V.

# Parliament under the Revolution.\*

### TABLE OF KINGS.

JAMES I., 1603-1625.	THE COMMONWEALTH, 1649-1660.
CHARLES I., 1625-1649.	CHARLES II., 1660-1685.
JAMES II., 1685-1688.	

WITH Society thus matured, and greatly invigorated in its middle-classes, the dynasty of the Stuarts entered into a conflict, which, after surprising vicissitudes, ended in the twofold overthrow and final expulsion of this Royal House. It was a time when the spiritual energies, set free by the Reformation, new institutions regulating Church government, and the new fundamental principles bearing on State-law,

\* The Statutes of the Realm contain the legal data of this period. Vols. iv. a v. vi. vii. a. For the time of the Commonwealth supplementary documents are : Acts and Ordinances during the Usurpation from 1640 to 1656, by Henry Scobell. Of the Parliamentary Procedure Parry gives moderately complete extracts in his "Parliaments," 1839, pp. 240-603. Standard Historical works : Macaulay, "History of England ;" Hallam, "Constitutional History," vols. i. ii. The questions of State-law of the Revolution are treated by Clarendon, "The History of the Rebellion ;" Burnet, "History of His Own Time ;" Guizot, "Histoire de la Révolution d'Angleterre," "Histoire de la République d'Angleterre ;" Dahlmann, "English Revolution." Foreign relations are treated in ample detail by Ranke, "English History," vols. i.-v.

were pitted against each other, in the conflicts of this period assuming a character differing from the mediæval wars of the Barons.

By the English Reformation the monarchy had been constituted the universal heir of the Papacy. If thereby an important step was taken towards freedom of thought, a serious step had also at the same time been taken towards endangering the fabric of the Constitution. The clash of interests that had so long and so deeply moved the Middle Ages, was now transferred to the sphere of the Constitution itself. If the line of demarcation between Church and State had till then been safeguarded in England by a feeling of national jealousy, this bulwark between the two had fallen away ever since both had been brought together under the sway of one Lord Paramount. The two tendencies of the human mind, which had been hitherto embodied in Church and State, now became jarring elements within the State itself.

A thousand years' experience had implanted in the popular mind the idea of one universal Church. But the sixteenth and seventeenth centuries found themselves involved in bitter strife as to which was the true Christian and Catholic Church. The possibility of an equality of rights, or even of tolerating different beliefs, was wholly foreign to the prevailing views of life, and, in fact, impracticable, so long as each Church exercised a right over marriages and the whole groundwork of domestic law and public education, and regarded innumerable other legal relations of the social life of the citizen as objects of legislation under the supreme power of the Church, which, like every



other ruling power, could exist only as an indivisible authority.

But the Reformation having led to contentions not only between the old and the new Church, but also between the narrower and broader tendencies of the Reformation itself, each claiming exclusive recognition, the Crown felt itself compelled to take up a decided position in reference to both movements, and to uphold the recognized National Church with all the means at its disposal. Even under Elizabeth it had already become more and more evident how greatly the import of the royal prerogative had been altered by the supremacy, just as in Germany the position of the reigning princes had become modified by the so-called *jus reformandi*.

In the spiritual sphere the King ruled as absolute master, aided by a body of clerical functionaries; in the worldly sphere, on the contrary, merely as a monarch, with powers limited by deliberate Parliaments and independent *Communitates*. Each system stood side by side, with their body of officials and their regulations in daily operation. From these very conditions there now arose for the first time theoretical systems of monarchical rights, based mainly on theological views and arguments,—a theory of kingly “transcendent authority,” claiming, like the popedom in the Middle Ages, a predominance over human teachings, by virtue of the authority of God’s commandments. The assemblies of the clergy in their Convocations henceforth became the centres of the doctrines of absolute State Government. In a few decades the clerical theories became embodied in the Canons

of Convocation (1606), which proclaimed the absolute monarchy, by God's command and man's nature, as the sole legitimate form of government, and the rights claimed by Parliament as "godless usurpations."

In this position of Church and State the *House of the Stuarts* ascended the Throne, at a period when the power of the "Estates" was everywhere giving way on the Continent. That this result did not come about in England also may be attributed, not so much to the personal character of the Stuarts, and the lack of a standing army, as to the general groundwork of the English Constitution, to the equality of rights and coherence of the "Estates," regarding which the kings of this dynasty were so fatally astray. The strengthening of the royal power under the Tudors was due in the first instance to the confusion of the fifteenth century, but was afterwards determined by the necessity of carrying out the National work of the Reformation. After accomplishing this mission the English Crown was, and still remained, the necessary bulwark of the Constitution, protector of the Church, hereditary holder of the supreme power, source of all right for the higher ranks, entrusted at home with the high office of protecting and elevating the working-classes and the clergy; abroad, of championing the sorely jeopardized Protestant cause in Europe. The fate and further expansion of the Constitution now depended on how far the new dynasty would keep within the bounds of English policy as laid down by Elizabeth.

Unfortunately the Royal race of the Stuarts lacked the intelligence needed for such a trust. Hitherto in the history of England Royalty had oscillated from

generation to generation, in ascending and descending lines. Now, however, the downward tendency is manifested throughout a whole dynasty for three successive generations. Scarcely ever has a reigning family occupied the Throne which considered itself to such a degree exempt from the sovereign duty of protection. Their way of regarding matters and of carrying them into execution, had but little in common with the character of English royalty and of the English nation, but belonged rather to the policy of the Guise family, and to the religious struggle in Scotland. Apart from other differences in character, one feature was common to these four monarchs—namely, a total want of sense and understanding for the Law of the Land. This century was accordingly absorbed in a series of Constitutional struggles, and in fact from the very outset:—

**I.—IN A STRUGGLE BETWEEN THE JURE-DIVINO ROYALTY AND  
THE PARLIAMENT,**

which, commencing under James I., ended with the execution of Charles I.

In sharp contrast to the previous dynasty, the Throne was now occupied by a learned pedant, James I., unkingly in bearing and in speech, who seemed to look upon the proceedings in Church and Parliament as Academic exercises, in which the “supremacy” of royalty had to be impressed on the incredulous. The erudition displayed in his writings, combined with an unmistakable sagacity, and a strange lack of sound judgment, made up a curiously blended character, in which, nevertheless, foresight and a yielding disposition sufficiently prevailed to avoid imminent dangers both at

home and abroad.\* This first of the Stuarts soon found himself already at cross-purposes with Parliament, whose electorate had gained a strong feeling of self-confidence during Elizabeth's reign. In his first Parliament (1605) 231 members are designated as "Knights," 140 as "Esquires," 71 as "Gentlemen," 9 as "Wholesale Merchants" besides 1 Mayor, 9 Aldermen, 4 Doctors of Law, 1 Sergeant at Law. The conflicts which began at once on the questions of taxation, monopolies, and the Scottish Union, already turned to the disadvantage of the Crown. In the Parliament of 1610 contentions arose on the subject of the feudal revenues, followed by a speedy dissolution and the dismissal of Lord Chief Justice Coke. The Parliament of 1614 was dissolved without passing a Bill, whereupon ensued sundry violent acts of the Star Chamber and some State trials. In the Parliament of 1621 James forbids the House of Commons "to treat of such matters, which went far beyond

\* Through the capricious testamentary dispositions of Henry VIII., and the childish will of Edward VI., there were created no less than fourteen possible titles of succession to the Throne after the death of Elizabeth. Hence all the more solicitously did Parliament and popular opinion hold to the Stuarts as the next heirs in lineal descent, just as at the time of Mary Stuart's execution, Parliament had acknowledged the eventual right of her son to the Throne. The real name of the family was Fitz-Allan, Hereditary High-Stewards (Stuarts) of the Kingdom of Scotland. The genealogical whim of James I. made him believe that the son of Mary Stuart and Lord Darnley united in his own person the hereditary kingship of the West Saxon dynasty, of the Norman Kings, of the Plantagenets and the Tudors. Amid the subsequent fluctuations arising out of French and Spanish alliances, it was doubtless mainly owing to genealogical pride that the Stuarts kept aloof from connection with princely families of Protestant stock. The later leaning of the dynasty towards Catholicism was brought about by constant alliance with Catholic princely houses, and through female influence.

their sphere and capabilities, and to mix themselves up in anything whatsoever that had to do with his government, or his State secrets." Thereupon followed a very strong circumstantial Protest, in which the House of Commons point out their freedoms and privileges as "hereditary" rights, and dispute every absolute power of the Crown as to religion and law-giving, designate Parliament as the highest Court in this country, and claim entire freedom of speech and the ultimate decision of contested elections.\* The King thereupon adjourned Parliament, and having, with his own hand, torn the said Protest out of the Journal of the House, published soon after a circumstantial declaration on the impropriety of such behaviour, and caused certain chief parliamentary speakers to be arrested. Nevertheless, by the close of his reign the Lower House had passed important laws, renewed the right of parliamentary impeachment, established its right to decide questions of contested elections, and raised emphatic protests against the arbitrary increase of the Customs. During this time sentence was passed on Lord Chancellor Bacon, involving a penalty of £40,000 and imprisonment for accepting bribes.

Whilst the political struggle was rife in Parliament, clerical controversies became more acute and pronounced throughout all classes of the population

\* Characteristic is the addition of the motives and the statement that in consideration of the sex and age of the late Queen, and that in order to avoid conflict, and especially to avoid dragging the succession to the Throne into dispute, many matters had been tacitly passed over. "But your Majesty has been wrongly advised by whosoever would hold that the sovereigns of England have possessed, of themselves, any absolute power whatever."

When the notion as to a mere national Church had shown itself utterly impracticable under "bloody Mary," it was found necessary, after much forethought, to grasp at the real weapon of the Reformation, the permission to read the Bible. The result was, as Hallam says, that the people began to interpret the long-forbidden Bible with a prejudice akin to that prevailing with an English jury, when examining evidence which one side has tried to suppress during a trial. To the mistrust against the authorized teachers of the Church was added a desire for self-inquiry and a striving for personal independence, in accordance with the national temperament. Both sections alike laid claim to the personal interpretation of Holy Writ in virtue of individual insight and conscience. A fruitful soil for such teaching was found amongst the Burgesses, the rising class of the Yeomanry, a great part of the gentry, but more especially among a portion of the lower clergy educated on the Continent. As is ever the case, constitutional became interwoven with religious questions, and, according to the influence they alternately exercised, the dissenting body was evolved either into a Constitutional ideal of Presbyterian cast, or into the broader democratic principles of the Puritans, or, finally, into Independents, who denied all Church authority, and looked upon the clergy as mere functionaries, chosen by individual congregations and invested simply with parochial offices of trust.

A theocratic tendency on the part of the State-Church clergy displayed itself with increasing energy against such manifestations. Henry VIII. and Elizabeth had retained the dignity of "Bishop," not as an

"*ordo*" established by Christ, but as an office convenient for securing Church discipline. But when the dissidents began vigorously to attack this office, the Bishops replied by appealing to their Divine appointment. They took up their opponents' argument of the *jus divinum*, and thereby at the same time recovered a certain independence against civil influence. The more the State-Church felt itself secure, the more was increased its consciousness of power in this respect, and the remembrance of its former dominant position. But the goal now aimed at could be reached only by establishing a fellow-feeling with the monarchy respecting the Divine character both of the episcopacy and of the Crown nominating the Bishops. If the dissenting party was accused of having a political background, a similar reproach might be addressed to the State clergy, with whom zeal for Holy Church now became a holy zeal for the temporal power of the head of the Church. The position was analogous to that of the princely bureaucracy in Germany, in whose excessive zeal for the authority of the sovereign there lurked a secret zeal for the further advancement of their own class. The purely absolutist conceptions of the kingly power were manifested in the meetings of Convocation, and in the writings of the time, immediately upon the accession of James I., and especially in Cowel's "Interpreter." The displeasure excited in Parliament by this production was softened down by an ordinance of James I., prohibiting its publication. But the progress of the absolutist theories in the succeeding generation is shown by the *Canones* of 1640, and by the work of Filmer frequently mentioned further on.

In this already highly strained state of affairs *Charles I.* began his reign, with the determination to quell the opposition, not like his father with idle protests, but with vigorous action. Endowed with all the domestic virtues, but with a lack of qualities befitting a monarch, filled with exalted ideas of kingly power, combined with a singular narrowness of insight into the nature and legal relations of the society surrounding him, he became involved in a series of contradictions, which, through the inevitable appearance of untruthfulness and untrustworthiness, led ultimately to his ruin. The hostile attitude of his first two Parliaments, and their refusal of subsidies, Charles answered by prompt dissolutions, and by ordinances intended to intimidate his opponents.\* The Star Chamber was now used for the levying of forced loans, which were recovered by means of enforced billeting, press-gangs, and imprisonments. The growing resistance against these measures, and the lack of money, meantime compelled the King to summon a third Parliament, in which, through the combined opposition of both Houses, he is forced to acknowledge the "Petition of Right," and the Declaratory Statute, 3 Charles I., c. 1, which declares illegal, both for the past and future,

\* As a blow calculated to intimidate the Opposition, there was instituted, at the end of the third Parliament, an illegal criminal prosecution against Sir John Eliot and two other members of Parliament, on the ground of their speeches in Parliament, which ended in a verdict with a heavy fine and imprisonment. Eliot died in prison. With reckless imprudence Charles I. had, before the breaking out of the Civil War, made the attempt personally to seize five of the leading members of the Lower House, in a way that seemed in accordance neither with any right of criminal procedure by ordinance nor with any normal legal process.



all forced loans, arbitrary imprisonments, and proceedings by court-martial.\*

So far the conflict had worn the aspect of former times, the abuses in the administration and *gravamina* of the land keeping within the range of the old conflicts between King and Parliament.

Now, however, the King, having no intention to keep his word, on receiving a subsidy, dissolved Parliament, firmly resolved never to summon another. "Ashamed that his cousins of France and Spain should have achieved a work which he had hardly begun," he initiated, from March 1629, a personal rule, which systematically attacked the fundamental principles of parliamentary constitution established for three centuries.

The attack speedily turned on the practically determining point—the setting aside of the assent to the subsidies. Those periodical grants of money presuppose a system of agreement between Crown and Parliament, which was incompatible with absolute rule. Even James I. had already sought to turn to account his theory of transcendent sovereignty for a levying of new Customs. This attempt was now seriously renewed by the world-renowned "Ship-money," which, in the Middle Ages, had been levied in coast-towns on the threatening of a hostile landing, but which was now

\* The Petition of Right is treated in later Constitutional State Law as a third Magna Charta, because by it a whole series of glaring administrative abuses are declared illegal in the most unequivocal terms. But Charles had no intention to bind himself by any such law. The Judges consulted in secret had given it as their opinion that the Bill might be allowed to pass, and that the Government might go on acting just as before.

imposed on all coast and inland counties alike, on the ground of a pretended peril of war. In this question there was involved an impost of something like £200,000, fully representing the ordinary subsidies, which were now procured by a circumventing of Parliament. The twelve Judges were previously brought together under Sir John Finch, and according to their own reports were induced by threats and promises to express an opinion in favour of the measure. By Royal warrant the Sheriffs were accordingly enjoined to burden each county with the fitting out of a vessel. The comparatively small county of Bucks, the home of Hampden, had thus, for instance, to equip a man-of-war of 450 tons, with a crew of 180 men, guns, powder, double set of rigging, provisions, and all necessaries. The ship had to be brought to Portsmouth by a certain day, and to be maintained for twenty-six weeks from that time in supplies, wages, and all necessaries at cost of the county. But as this ship equipment was not the real purpose of the measure, the Sheriff was further enjoined, in conjunction with the Mayors, to levy the necessary sums from the several freeholders and citizens, and to return the assessment-lists. Despite all intimidations, Sir John Hampden, by refusing the tax, made the question a legal point to be decided by the Courts of Common Law, this time in full Court of the Exchequer Chamber. But amid such clashing interests the Judges hesitated to pronounce judgment, and the proceedings were protracted over three months. At last seven Judges against five pronounced for the Crown. This brought the attack against the parliamentary constitution to a crisis, and

at the same time became the turning-point in the struggle for the Constitution, because it both afforded proof of the ultimate aim of the Government, and revealed the corruption of the Courts of Law.\*

The constitutional share of Parliament in legislation was a disputable point, in respect of ordinances not running counter to statutes of Parliament, but which nevertheless created, side by side, with them, binding principles of administration. The manner of carrying into operation this right of ordinance had meantime assumed a new fashion. As the dynastic domestic policy encountered a decided obstacle in the ceremonial forms of the Council, and in its judicial advisers, James I. had already begun to put aside the irksome machinery by transacting State business in the "Cabinet"—in other words, in small confidential meetings, in which

\* The disloyal treatment of the office of Judge, which was common to all the Stuarts, was first made evident through the Ship-money. The dismissal of Lord Chief Justice Sir Edward Coke on political grounds had already occurred under James I., by whom a shameless system of the sale of judgeships was introduced, which shattered the honourable repute gained by the Courts of Law under the Tudors. Under Charles I. this filling up of appointments became a political contrivance. Already, in the year 1626, Chief Justice Crewe was dismissed for not acknowledging the legality of the forced loans. In 1630 Chief Baron Walter was suspended for questioning the legality of a proceeding taken against members of Parliament. In 1634 Sir Robert Heath shared the same fate on account of opposition to the Ship-money and to Archbishop Laud. His place was filled up by the unworthy Chief Justice Finch.

Characteristic of the *morale* of such a body of officials was the circumstance that the same twelve Judges, at the trial for High Treason against the minister of the King, upon a very doubtful point, were unanimous in pronouncing for his guilt. Parliament subsequently answered this by the impeachment of Finch, Keeper of the Great Seal, and six Judges, one of whom was arrested on the bench in Westminster Hall.

the counsel of the Court-party possessed greater weight than that of the responsible ministers. It was this body, thus constituted, that, under the name of Royal Council, now exercised the functions of the Star Chamber. From this Council henceforth emanated the compulsory measures needed by the new *régime*, which, amid increasing opposition, grew into a comprehensive system of warrants of apprehension, amerciaments, fines, and refusal of "Habeas Corpus." From the same centre was developed that system of government which, in the language of Clarendon, "By ordinances commands what was not by the law commanded, forbids what was not by law forbidden, and thereafter punishing disobedience against the ordinances by infliction of heavy fines and imprisonments." So soon as Parliament ceased to be summoned, and there was created, by the Star Chamber, an administrative executive tribunal, every bulwark against absolute government disappeared. The public financial and police measures were now carried on by means of a long series of ordinances, while the exorbitant penalties exacted by the Star Chamber created a considerable source of revenue.\*

The Crown found a further means of conducting the

\* The anti-constitutional Ordinances of the "Star Chamber" were enforced by fines and imprisonments. Fines imposed for preposterous amounts according to the current value of money—£20,000, £10,000, £5,000—were not unusual. The sum total was estimated by contemporary authorities at £6,000,000. Besides money-fines and imprisonments, the Star Chamber now also enjoined punishment by the pillory, flogging, and cropping of the ears. Capital punishment and forfeiture alone remained, according to the text of Magna Charta, reserved to the ordinary Courts of Law.

conflict in its Church organization, which had made over to the King the appointment of the higher ecclesiastical offices, and of the Bishops, for the maintenance of the National Church in its constitution as "by law established." Charles I., although personally a believer in the Protestant faith, hoped by resorting to the forms of the Roman hierarchy to progressively develop his spiritual supremacy into a temporal absolutism. In this sense the reforms of Archbishop Laud bear a certain Catholic leaning; a return to transubstantiation, equivocally worded; to auricular confession; preferment of unmarried clergy; restoration of the "worship of images," and of the Crucifix; revival of splendid vestments, of the Altar at Communion, and of genuflexions, in conjunction with harassing, intolerable persecutions of the dissident sects. This identifying of Church rule with an extreme clerical party tendency could not fail, judging from all past experience, soon to be followed by open rebellion in the sister kingdom of Scotland. But in England also the Royalist Church faction and the clerical party spirit were so elated by the systematic appointment to the higher ecclesiastical offices in this direction, that in the *Canones* of 1640 their enthusiasm found expression in the sentiment that: "It was High Treason to preach, and to teach that side by side with the Royal authority, any other co-active power, either Papal or popular, can exist; that all payment of taxes is a bounden service of the subject, according to Divine and natural law, and, the law of nations; that no ecclesiastic shall venture to speak otherwise of the power of His Majesty than is in this Canon prescribed." The work of the Reformation seemed thus to have

become merely a means for extending the powers of King and clergy.

Nevertheless, the groundwork of the Constitution—the combination of the State administration with the communal bodies—rendered this system of government impracticable for any length of time. Absolutism made shipwreck on the rock of the English county organization. The Sheriffs and Justices of the Peace might be deprived and replaced; but it was still necessary to choose them within the county itself, where an illegal system of rule was very differently felt than by a mere body of professionally trained officials. Neither through intimidation nor through the prospect of reward could these propertied and consequently independent officials be induced to become an organized instrument for the oppression of their fellow-citizens.

Hence it was that the assault against parliamentary institutions, originating with the central authority, gradually broke down in the shires, where was lacking an effective mechanism for carrying it out. The unseen, yet none the less insurmountable, resistance was found in the solid county organization, firmly united as it now was with the borough and parochial administration. In the protracted struggle the means at the disposal of the Crown became slowly but completely exhausted. The King was thus compelled, by stress of war and the Scottish rebellion, again to summon a Parliament after an interval of eleven years. This so-called "Short Parliament" was inconsiderately dissolved in a few weeks, but only to make room soon afterwards for the "Long Parliament," which held its first sitting on November 3rd, 1640.

The measures of the Long Parliament were now successively directed against abuse of power, and accordingly assumed a retro-active movement against the three abused departments of the royal prerogative :—

Against the corrupt Courts of Law : with a declaration against the illegality of ship-money, and the reversal of the sentence against Hampden, with impeachment of the presiding judges.

Against the Privy Council : against the Prime Minister, Strafford, the charge was brought of High Treason, the King, with equal selfishness and disregard of his pledged word, assenting to his Bill of Attainder and execution.\* But the criminal executive functions, and civil jurisdiction of the Privy Council, together with all collateral functions of the Star Chamber, were henceforth abolished by Statute 16 Charles I., c. 10.

Against the abuse of Ecclesiastical power was directed the removal of the High Commission Court, which was likewise abolished by Statute 16 Charles I., c. 11. Connected with this step was the impeachment of the twelve Bishops. Further, on September 1st, 1642, the Lower House, *nemine contradicente*, resolved upon the abolition of the episcopal office, and on the sequestration of ecclesiastical property, and by this

\* The day after Charles had signified his assent to the Bill of Attainder against his minister (May 11th), he sent, through the young Prince of Wales, a missive to the Lords, wherein he begged them, conjointly with himself, to try whether the Lower House might not be induced to allow of Strafford's being imprisoned for life. "If, however, nothing less than his life can satisfy my people, then I must say, '*Fiat justitia!*'" A postscript adds : "If he is to die, it were merciful to afford him respite till Saturday."

"root and branch Bill" dealt an incurable blow at the parliamentary constitution. In due course followed the sentence and execution of Archbishop Laud.

Lastly, the "Triennial Act," passed in 1641, was directly aimed at the attempts that had been made to dispense with Parliament altogether by the device of not summoning it. Just as after the Peace of Westphalia the attempt to get rid of the German Imperial Diet by the same device was met by its establishment on a permanent footing, here also, in case of the non-summoning of a new Parliament, the officials, and ultimately the electors themselves, were empowered to do so, with the addition of the ominous clause, that the present Parliament shall not be dissolved without its own assent.

In the now beginning *Civil War* accidental circumstances brought into use the party names of "Cavaliers" and "Roundheads." \* Nobility, gentry, citizens, and yeomanry were ranged in two hostile camps. In round numbers, about two-thirds of the nation seem to have sided with the Parliament. On the side of the King stood a good half of the nobility and of the old gentry, partly from conviction, partly for honour's sake ; on the side of the Parliament the larger portion of the prosperous towns and free yeomanry, headed by certain Lords and members of the old landed gentry, such as

\* When Charles, shortly after the outbreak of the Civil War, summoned the loyal members to a Session of Parliament at Oxford, only 118 Commoners obeyed the summons. The majority of the Lords had also at first remained with the Parliament at Westminster, proceeding, however, later on to Oxford, where the King treated this "Mongrel Parliament" of his almost with contempt.



Hampden, Digges Vane, or men who, like Blake, Bradshaw, and Cromwell, still belonged to very respectable families. The mass of troops on either side consisted of the equally divided county militia. During the first years it was still the upper classes which, divided amongst themselves, were mutually ready to bring about an understanding, the Cavaliers even frequently negotiating without the King's consent. On both sides the war was, as a rule, conducted honourably, with due regard for the rural populations, and conscientious observance of capitulations and suspension of arms, and without any display of class hatred. So late as 1646 one of the conditions of peace was still the elevation of Cromwell and others to the Peerage. But under the strong influence of the heterogeneous Irish and Scotch factors the firm elements of coherence, and the legal conceptions of the Constitutional State Monarchy, were very slowly dissolved, although all party aims still sought in such relations a bond of union with the Crown, a bond not to be found in the reigning sovereign. But after years of undecided conflicts, the parliamentary army, by adopting the system of regularly paid troops, at last gained the upper hand. Into the newly-formed regiments of Cuirassiers, Dragoons, and Infantry now thronged the enthusiastic strugglers for religious freedom, the fanatical opponents of a "godless usurped" royal supremacy. Henceforth the movement found its chief mainstay in the standing army, acting at first still in concert with the Scottish insurgents, to whom the King had yielded after the hopeless defeat of his adherents. Hand in hand with the military successes effect was now also

given in Parliament, army, and petitions of all sorts to the biblical arguments advanced by the Dissenters against the Divine right of the King, herein displaying as much polemical skill, acumen, and doggedness as the Court theologians themselves. From the parliamentary ranks men now came to the front whose notions of Church and State went far beyond the monarchical order of things as then prevailing. The time had at last arrived for the action of men for whom freedom was a religious belief, and Oliver Cromwell was the first to raise a regiment of such enthusiasts, well armed inwardly by a strong conscience, outwardly by their trusty weapons, "Ironsides," standing shoulder to shoulder as one man. Such were the dissenting bodies, driven to fanaticism by the long oppressive administration and the Catholic tendencies of the State Church. From its very essence the absolute system had inevitably led to an extreme assertion of individual action in Church and State, and thereby to a republican theory of the constitution. The old heretical doctrine, that "the right of the ruler is also founded in grace," and that consequently the civic ruler loses this right by sin, urged the fanatical sects fiercely to demand the punishment of the "godless usurper" of an ecclesiastical supremacy, and in broader social circles this demand afterwards assumed the more secular form of "High Treason of the King against the People," as subsequently in the parliamentary resolution of January 1st, 1649. William Allen, Adjutant-General of the army, affirms that already in the beginning of the year 1648 "the Council of officers, after long consultation and prayer, to the clear and united resolve had come that

it was their duty to bring to account Charles Stuart, that man of blood, for the blood spilt, and for the unhallowed dealing he had used against the cause of the Lord and His people." While the moderate sections were hesitating over the course to be adopted against the captive King, and were treating for peace, Charles had been rashly exercising, even in prison, his "king-craft," in order to disunite Parliament and the Scotch, the army and people alike. Exactly at this turning-point there came to be known far and wide a series of his double-dealings, accompanied by irrefragable proofs. Truly characteristic, amid this contention for principles, at this eventful time, was the firmness with which individuals and parties held steadfastly by their convictions as to their constitutional rights. On April 28th, 1648, the Commons still affirmed the resolution: "That they desire not to change the fundamental rule of the Realm, through King, Lords, and Commons." The majority of the Lower House stood forth steadfastly for the inviolability of the King's person. But against the last attempt at reconciliation was raised the remonstrance of the army, wherein: "His Excellency the Lord-General, and the General Council of the officers, set forth the danger of an arrangement with the King, and require that the person of the King be pursued in the ordinary way of the law." As the Commons, however, on December 6th, 1648, by 120 votes against 83, decided for the acceptance of the conditions of peace, the army proceeded with force of arms against the majority, took forty-seven members of the House prisoners, and pronounced ninety-six others excluded. Despite the

protests raised, the remaining minority continued to sit as the House of Commons ("Rump Parliament"), and raised the charge against the King of High Treason against the people of England, which resulted in the appointment of a Judicial Commission, and the consequent sentence and execution of the King.

The terrible shock of such an outcome for all subsequent generations—so different from the "removals" from the Throne and the murders of kings during the Middle Ages—lay in the tragical contradiction which had here been developed in the supreme fundamental principles of State order. Under John Lackland the monarchy was certainly more deeply degraded than under King Charles. The Roman Church, when Luther rose against it, was more corrupt than the Anglican under Charles and Archbishop Laud. But in the time of John the degraded monarchy was supported by a Church, still in the plenitude of her moral power, embodied in the heroic figures of Archbishop Langton and his brethren in office. On the other hand, during the Reformation, the impressive figures of the Church Reformers and capable monarchs stood arrayed against the degenerate Roman Church. But in the Papal Cæsarism affected by Charles I., Crown and Church alike appeared as if distorted in their distinctive character. In this aspect the legitimate monarchy represents the very contrary of the duties incumbent on a sovereign and a head of the National Church. It was the overwhelming sense of this truth that paralyzed the arm of the conservative and moderate majority of the nation, which, being reduced to passive resistance, suffered a fanatical minority to fall back upon that inherent right

of society (see p. 35) which had been held in reserve at the rise of the hereditary monarchy.\* On the ground of the declared sovereignty of Society (sovereignty of the People), a reconstruction of State and Church order had now to be attempted.

## II.—THE COMMONWEALTH.

The now kingless State became a Republic under the title of the "Commonwealth of England," adopted in order to avoid a foreign and unpopular expression. An Act of Parliament of May 19th, 1649, declares the people of England "a commonalty and free State." The monarchy and the House of Lords, as being "unnecessary and dangerous to the liberty of the people," were abolished by express resolutions of Parliament.

The actual power of the party which had successfully striven for this result was embodied on the one hand in a victorious army, and on the other in a

\* I call this manner of acting "passive resistance." It was the usual course subsequently adopted by the Opposition, which, in the resolutions of Parliament, remained faithful to its convictions, leaving to others the passing of measures for which they might hold themselves responsible in honour and conscience. The Opposition, loyal to the Constitution, found itself in the alternative position either to sacrifice the Constitution, and with it their persons and fortunes, or themselves to assail the monarchy against their own principles. Sufficient proof of such a state of things is afforded by the testimony of Lord Chancellor Clarendon (father-in-law of James II.). According to the Court theologians surrounding the King, and according to his own interpretation, all promises given by the monarch, containing the clause "*non obstante*," were understood to be absolutely unbinding. On this fact is based that characteristic feature, respecting which Macaulay said, not without reason, "There never was a statesman whose deceptions and falseness could be shown by such irrefragable evidence."

Parliament House, which, after the expulsion of the moderate members, comprised those only who had hitherto constituted the extreme Left. By the House was elected a Council of State, of which Lieutenant-General Cromwell assumed the practical leadership. The several measures of Government proceeded at first partly from the Council of State, partly from the Parliament, partly from the Council of Officers, or from the Lord-General personally. It had long been generally known that opinions in Parliament and in the army were widely at variance. But the dangers of the country, and the combined efforts abroad, still kept this irregular government together for many years. Cromwell recognized in the Long Parliament the only legal bond of union between the past and the present. Hence he could not make up his mind to dissolve it till April 23rd, 1653, from which time the military dictatorship of the Lord Protector Cromwell remained the essential character of the Government.

An unbiased judgment must allow that this administrator of the Realm did represent the State worthily. Whereas under the Stuarts England had dwindled from her position of power, Cromwell stood forth pre-eminent amongst the rulers of the time. The crowned heads of Europe paid him homage in turn, while Army and Navy, Ireland and Scotland, obeyed as never before. The commercial policy of the Protector continued to be followed for many generations in England, just as he also was the first clearly to recognize England's destiny to become the mistress of the seas. Men of capacity and integrity were appointed to office, and genius and learning were encouraged, to

all which was added the new administrative maxim of religious toleration. Even the Jews, after having been excluded for well nigh three hundred years, were allowed again to settle in England. This, with much besides, was assuredly a real exercise of the royal functions worthily replacing the administration of the fallen dynasty.

There nevertheless prevailed throughout the land a dissatisfied feeling even amongst the party in the ascendant. Like all victorious factions, they also experienced the truth, that the actual possession of the State power had changed the position of parties. They found themselves at the head of the administration, but at variance with the state of English Society. As constituted since the close of mediæval times, the structure of this society stood in irreconcilable antagonism to the political ideal of the democratic parties. These had grown up mainly among the orderly sections of English middle classes, whose civic position, however, had afforded but slight experience of the public administration, and whose ecclesiastical position, thanks to long oppression, had taught them nothing but a spirit of opposition. However heroic and victorious on the battle-field, their contracted views still rendered them incapable of at all determining a permanent framework of the Constitution. It became, in fact, evident that the demands of the "people" were rather inspired by the most diverse views and interests.

The Royalist and Episcopalian party-groups, which, in their common misfortune, clung closely together, appeared now as the conquered section. The long ill-treated, but now victorious, triumphant faction,

clamoured for the punishment of the "delinquents," that is, of all who had taken any part in the illegal measures of Charles I. The Commonwealth, with its unheard-of financial needs, accordingly prescribed wholesale sequestrations, exacting considerable penalties in lieu of all claims, and in the case of the more seriously compromised, proceeding even to the confiscation of their estates. It is computed that between three and four thousand gentlemen compounded in this way, by paying a total sum of no less than £1,305,300; while the sequestrated estates were estimated at five times as much. Of the State clergy some two thousand were deprived of their benefices. While still enjoying a certain influence on their surroundings, these sections thus stood in a hostile attitude towards the Government.

The moderate Presbyterian party, violently ejected from Parliament by the triumphant Left, were as much opposed to the present administration as the old Royalists themselves, chewing the cud of bitter opposition and aimless discontent. Their clergy even refused to read out the ordinances of Parliament in the wonted fashion from their pulpits, while in Scotland they again took up arms for the King.

Among the more extreme parties of the Left disintegration set in from the time of their actual participation in the affairs of State. In one section Puritanic zeal assumed a worldly aspect, transforming itself to an abstract democratic ideal of State Government. In another the religious element continued to predominate, betraying itself in a burning zeal against "worship of images," and against the episcopal hierarchy. But



both remained equally impatient in their several attitudes, while circumstances placed them jointly in the ascendant. The monarchy had this time been overcome in the hard conflict, not through the "liveries" of the Barons, but through the uncompromising convictions of simple-minded men led by captains drawn in ever-increasing numbers from their own ranks. This course of events had given to the middle-classes a highly exalted self-consciousness, with which the existing Government had to reckon. From all sides the "well affected" (as they were now called) began to bring to bear their representations upon the State with a ceaseless array of petitions, amongst which "free Parliaments" naturally took foremost rank.

In this position of parties it became at once evident that the lower sections of the community could not afford a basis for the establishment of a self-government, in which the higher personal offices of State in association with the large landed estates, and the service of jurymen and other parochial duties in association with the smaller holdings, had grown into a customary communal system of local administration. After this coherence had been severed by the Civil War, it became obviously impossible to reconstruct with these scattered fragments a harmonious system of active communal life.

The county *militia organization*, despite earnest efforts on the part of Cromwell, became irreconcilable with a standing army, whose services, renown, and efficiency were combined (as ever) with deep contempt for a system of militia, which had shown itself so insufficient during the Civil War.

In the *judicial system*, the continuance of Judge and Jury in civil matters was no doubt possible. But in criminal matters the Grand Jury, composed of the gentry, and the Petty Jury, composed of antagonistic parties, became an instrument with which the Republican Government was no longer able to execute its ordinances.

In the *Police administration* there remained for a Republican Government the alternative of either placing suitable persons in the commission of the peace, in which case a hostile majority was certain, or of nominating new and inexperienced men, to whom the necessary authority was lacking. Hence from the very first the Police administration was the weak side of the Commonwealth. It worked smoothly enough in the boroughs well affected to the Government. But in the counties the Protector was unable either to set aside the old elements to any considerable extent, or to exercise the old spirit. The English sense of order led, accordingly, to a militarily-organized police rule, instead of a self-government according to the laws.

The *financial system* of the Republic demanded unheard-of means for the maintenance of a large paid army, rendered necessary also by reason of the relations in Ireland and Scotland. The old system of taxation, according to assessments made by the community, showed itself for this purpose wholly insufficient. The Parliament, under these circumstances, resolved upon a monthly levy, amounting to £90,000, distributed proportionately over the counties, and an Excise rate of five per cent. on beer, tea, and a host of other articles of consumption. The system of taxation was on the whole not unfair, but was very exacting.

Sinclair has certainly exaggerated the State requirements from November 3rd, 1640, down to November 5th, 1659, computed at £83,331,198, wherein £32,172,321 was Land-tax, £7,600,000 tonnage and poundage, £8,000,000 Excise, £3,528,632 from sequestrations, £10,035,663 from sale of Church property, £4,564,986 from sequestrations and settlements of claim in the case of Royalist "gentlemen," £2,245,000 from the sale of property of "delinquents." The wants of the standing army seemed to engulf the whole public income. The new taxes pressed more heavily on the population than the Ship-money and all the ordinances of Charles I., while their legality was quite as contestable as that of the Ship-money. There was, consequently, no option except to replace self-government by the militarily-organized police power as tax-collectors.

Still more inconsistently constituted was the Church administration, since, in the place of the overthrown State Church, the equally intolerant ideas of the Presbyterians had prevailed. According to their ideal of a Church parliamentarism, each parish should have its pastor and several lay-elders, a group of parishes forming a district synod, with a presbytery of clergy and elders, and several district synods, a provincial synod with a general synod at the head of all. But this superimposed system of elective assemblies showed itself, as a teaching body, just as dangerous for the Church itself, as it was irreconcilable with theological harmony. The spiritual electoral bodies soon displayed a greater spirit of discontent than the Episcopal system, and came equally into conflict with Parliament.

The detailed organization was carried out only in London, Lancashire, and a few other counties, and made itself so hated by its arrogance and intolerance, that this very abortive essay helped to smooth the way for the restoration of the State Church. The confusion prevailing in all ecclesiastical relations had already compelled the Commonwealth to adopt a system of toleration, saving a few reservations against "Papists."

These relations rendered it impossible to carry into effect the administrative laws through the established organization of the *Communitates*. The Commonwealth speedily found itself in as violent conflict with the traditional self-government system as Charles I. had ever been. The taxes imposed through ordinances were refused, and against such refusal no jury would pass any sentence involving penalty. In consequence, a High Court of Justice was constituted on the same lines as the Star Chamber, and a few persons were sentenced to death on account of their violent opposition. On like grounds, the "Provincial Governments" of former times were revived. Since 1655 the Realm was apportioned into districts, with eleven Majors-General at their head, mostly bitter enemies of the Royalists, and harsh and overbearing against the civil authorities. The military governor was responsible for the submissiveness of his district—*i.e.*, empowered to levy troops, to raise taxes, to inquire into the private life of the clergy and schoolmasters, to imprison dangerous and suspicious persons, etc.\*

\* This Puritan police-control was detested, not only for the severe prohibition of the now popular Prayer Book, for the destruction of works of art in churches and of monuments, by

But all these combined circumstances rendered it necessary that the State powers should be concentrated in one hand, and the person intended by Providence for this purpose seemed to be found in Oliver Cromwell. His ponderous figure, combined with untiring energy and personal courage, the hard, uncompromising manner in which he went straight to the point, were the incarnation of the Puritan spirit. But joined with all this was a truthfulness of character and integrity of convictions, which have often, in later times, been questioned, owing to the Biblical unction of his speech, which was merely the prevailing language of the time and of the party.\*

It is a pure misapprehension of the real state of things the burning of pictures of saints, even in public art galleries, by the mutilation of statues (to make them look proper), but, above all, by the rigorous control of morals, leading to the suppression even of public amusement, rural wrestling-matches, and may-poles of the rural population. Playhouses especially were to be pulled down, the audience fined, and actors driven off with broomsticks.

\* The accounts of English historians of a subsequent period, *after* the struggle for the Constitution had been fought out, take a hostile attitude towards the Protector. For a social order of aristocratic caste it was scarcely possible to do justice to the man and to the time. It was only in the nineteenth century that Carlyle's hero-worship strove to make up for the past, and the present generation seems inclined to fall in with his views. Unjust, and tinged by national and personal feeling alike, is Guizot's opinion on this subject, in connection with which I would quote the words of a doctor of theology of the present day: "That century was a century of faith, one might almost say of a child-like faith. Men like Eliot and Hampden, Cromwell and Vane, believed in God and Christ, in sin and the Evil One, in heaven and hell, as described by Holy Scripture and as depicted by Milton. The world to them was full of God. Where duty called, these men could brave everything, for to them all was sent and ordained from above." Vaughan, "*Engl. Revolutions*," iii., 332, compare with the opinion of Ranke, "*Engl. Geschichte*," iii., 435-584. Compare also Alf. Stern "*Milton und seine Zeit*," vol. i. (1885).

to suppose that the impossibility of achieving a regular parliamentary rule was attributable to the personal ambition of the Protector, whereas it was the inevitable result of the severing of the connecting bonds with which the parliamentary constitution had been interwoven. The will to effect this was no more lacking than was the constant stimulus of the victorious party itself. The impossibility of establishing a parliamentary government without the necessary fundamental element was shown at this period by seven abortive parliamentary attempts, whose barren results constitute precedents or warnings for all time to come.

The *first Parliament* of the Commonwealth consisted of the remnant of the extreme Left remaining from the Long Parliament (the so-called "Rump-Parliament"), from which was chosen a Council of State, comprising forty members. But opposed to this Council, and in constant conflict with it, was the Great Council of officers, in which the staff officers constituted the Supreme Council; each company, or battalion, choosing two adjutants, or agitators, which represented a Lower House. As the regiments were without chaplains, the officers and soldiers also assumed the office of preaching and praying. The army, organized on this footing, at once resisted by force of arms every endeavour to disband it, or to diminish its numbers. On the other hand, the Rump Parliament had, in course of time, expanded to somewhat over one hundred members by subsequent elections. Being in possession of political power, the House could never be induced to decree its own dissolution. Through its long continuance and the small number of members, and through

the abolition of the Upper House, the Assembly lost more and more its representative character. It had, in fact, become nothing more than a committee of confidential men belonging to the Left, who now, as heretofore, constituted the minority in the land, and who could hold their ground only by the support of the army. Yet this House remained the sole legal bond between the military dictatorship and the nation. In constant friction with the Assembly, Cromwell continued to temporize, awaiting the growing discontent which could not fail to arise from the severe ordinances, the imposition of taxes, the misunderstandings, and, above all, the refusal to dissolve. At last the moment arrived on the 20th April, 1653, when in stern tones he declared Parliament dissolved, ordering the Chamber, where the sittings were held, to be cleared by armed force and closed.

*A second preliminary Parliament* of 144 trusty men was summoned by Cromwell, as Captain-General, to deliberate on the re-establishment of a civil power. The members had, by advice of the officers, and, apparently, on proposal of the dissenting clergy, been nominated only from the "well affected." The Assembly met on the 4th July, 1653, amid fervent prayers, assumed the name of Parliament, and made a number of motions for the bettering of Justice, the introduction of civil marriages before the Justice of the Peace (with a view to rendering valid the numerous marriages of dissenters), regulation of the Excise, abolition of sinecures, and future abolition of Church patronage. But this essay at parliamentary legislation made shipwreck on an over-hasty resolution passed on the

abolition of tithes. Then the Assembly resigned its commission into the hands of the Lord-General. It had busied itself with proposals favourable to the middle classes, but which had not the sympathy of the higher classes, and seemed hostile to the interests of the clergy and lawyers. The bitter enmity of the higher classes gave to this preliminary Parliament the nickname of "Bare-bone Parliament," from a London leatherseller, Praise-God-Bare-bones, a shining light of the Assembly.

A *third Parliament* followed in the year 1654, as an attempt at a Constitution on the basis of a single chamber, the democratic party being still unwilling to entertain the notion of an Upper and a Lower House. In accordance with the "resolutions" which, in January 1650, the Long Parliament had formulated on the future Constitution, the greater number of small boroughs were passed over on this occasion, while the number of county members was about tripled. In his opening speech the Protector spoke of the "necessity of a settled establishment, but which was not to be expected either from the 'Levellers,' who wanted to reduce everything to a system of equality, and to introduce party rule in civil matters; nor from the Sectarians, who wished to upset all order and rule in spiritual matters." But in the very first proceedings there was manifested so violent a democratic spirit of resistance, that on September 12th, 1654, the Protector declared : he had received his office from God and from the people ; that he did not intend to infringe the privileges of Parliament, but that necessity knew no law ; he had, consequently, caused



the doors of Parliament to be locked, and required from the members before entrance a written document recognizing his authority. The Assembly yielded, but in the future proceedings upheld the claims for a constituent Parliament, demanding that there should in future be short Parliaments at fixed periods. Those empowered to vote in counties should be freeholders of 40s. yearly income, or having £200, while in the boroughs the conditions should remain as heretofore. The distribution of seats was to be according to the size of the electoral district ; consequently, there were to be 270 members for counties, 130 for boroughs, 30 for Scotland, and 30 for Ireland. The House should have the exclusive power of legislation, and of levying taxes. No reference was anywhere made to the constitution of any kind of permanent body for the protection of existing legal order. The constitutional ideas of the democratic party were thus exhausted in *one elected body*. The members of the Council were no doubt to be nominated by the Protector, but confirmed by Parliament. But the question whether the definitive adoption of this constitution required an understanding with the Lord-Protector, was negatived by 107 against 95 votes ; whereupon Cromwell, on the 22nd January, 1655, declared the Assembly dissolved.

A new constitution on the footing of two Houses was introduced in the *fourth Parliament* summoned by Cromwell on September 17th, 1656. A preliminary condition, however, was attached, that those members only shall be admitted "who by the Council shall be approved, and thereupon a certificate have received." In consequence, ninety-three members were excluded ;

later, however, they were admitted on taking an oath to accept the new constitution. The revival of a certain influence of property already began to make itself felt. Reference is already again made to the question of "establishing the Government on the old and approved foundations." The Protector was allowed to name his successor, but was only permitted a suspensive veto in the matter of legislation. The Parliament was to consist of two chambers; the "other House" (Upper House) of from forty to seventy members named by the Protector, and confirmed by "this House." On the 25th March, 1657, a resolution was further passed with 123 against 62 votes: "That his Highness may deign the name, style, title, and office of a King of England to assume, and the same to exercise according to the laws of this nation." Cromwell, however, after some hesitation, announced, on the 2nd May, his definite refusal of the title of King. On the 26th May the Constitution came into force; on the 10th December, 1657, the Protector exercised his right of nomination by summoning sixty-three members for life, to whom, however, "public opinion" was unwilling to accord the dignity of a "House of Lords." As, however, the hereditary Peers, with the exception of about eight, hesitated to assume a new dignity lasting for life, the Protector had to address his nominations to persons who owed their position in the army and in the political world to the possession of property acquired through more recent party relations. Both Houses now met on the 20th January, 1658, the Protector opening the proceedings with the address, "My Lords, and you the Knights, Citizens, and

Burgesses of the Commons." But on occasion of the first message "from the Lords" opposition was raised in the Lower House, in which the ninety-three previously excluded had now been re-admitted, and the message was refused. The discussion thereupon extended over several days, until, on the 4th of February, Cromwell dissolved the House with the declaration that "He had not wished to undertake the Government without a number of Lords as intermediaries between him and the House of Commons, as a defence against tumultuary and popular tendencies. There came therefrom only strife, and as no one was therewith content, he dissolves this Parliament, and may God be judge between him and them." On the 3rd of September of the same year Cromwell succumbed to the cares of government, and was buried with kingly honours, such as up to then had never been shown to any legitimate monarch of England. Thereafter followed :—

A *fifth Parliament* met under the Protectorate of Richard Cromwell in January 1659. The elections to the new House were, however, followed out according to the old lines, the small boroughs hitherto excluded being again summoned, while the older parliamentary ideas were revived with renewed force. The new Protector and the united Constitution were certainly acknowledged, but only after lively debates, and amid expressions of universal displeasure. The Long Parliament was designated as a "handful of the House of Commons" and as an oligarchy, despised by all who love a free communal life. The "other House" was for the present session recognized as a House of Parliament, but with the proviso that it be not the

intention to exclude from their privilege such old Peers who had shown themselves true to the Parliament. But after a few months the vehement displeasure of the army forced on the dissolution of Parliament. The Protectorate of Richard Cromwell was no longer acknowledged, and the officers demanded the recall of the Long Parliament dissolved by Cromwell. There followed accordingly,

As *sixth Parliament*, the Rump Parliament, again summoned in May 1658. The old Speaker, Lenthall, and about fifty members, resumed their seats with the declaration: "That they, by God's grace, were again established in their liberty and the right of their sessions." They elected a Council of State, but could come to no practical resolutions. In October violent dissension broke out with the army, touching the position of the civil authorities. The dismissed officers prevented the meetings by force of arms. Then succeeded an interval of violent rule on the part of the army, through a "Committee of Safety." By the settlement of their pay and the intervention of General Monk external order was again established, the Parliament, however, having to agree again to receive the members who had been ejected in December 1648. The Parliament, thus modified, still sat for a few months longer. But on March 16th, 1660, with its own concurrence, "that the Parliament summoned on the 3rd November, 1640, be dissolved," a new assembly of Lords, Knights, Citizens, and Burgesses was summoned for the 25th April, 1660, to which four hundred members for England and Wales were to be elected according to the electoral laws of 1653. There

accordingly followed in the twelfth year of the Commonwealth its

*Seventh Parliament*, the so-called "Convention Parliament" of 1660, which decreed the restoration of Charles II. to the Throne.

For any constitutional advancement of England, the Commonwealth remained just as fruitless as it was for all the institutions of "self-government."

### III.—THE RESTORATION OF THE MONARCHY UNDER CHARLES II.

was conditioned by a natural re-action of the propertied classes against the hitherto prevailing rule of the army and a puritanical minority.

In the whole course of English history, the social privileges of the Lords, of the old gentry, the State-Church clergy, and of the lawyers had never been so grievously infringed as under the Commonwealth, and in fact, as it now seemed, without any sufficient ground. The danger of absolutism had been averted by the tragical fate of Charles I., so that the impossibility of such endeavours being renewed seemed irrevocably fixed. The united views of the time aimed visibly at a change. The death of Charles, but particularly his kingly bearing at the last hour, had already diverted the minds of the more moderate from the victorious side. Moderation and justice seemed now, to many men of the time, to rest with the other side. In other respects the manifestations of a re-action on the part of the propertied class are always alike. Where the interests of Society are directly engaged, such re-action can happen only through selfish motives. The expression of

faithfulness to the monarchy, no longer involving any risk, knew no bounds. But amid the flood of addresses a prominent position was now taken by the Universities as the great nurseries of theology. Oxford declared that it would never swerve from those principles, according to which it was in duty bound to obey the King without reservation or limit. In a solemn Act, the theory embodied in Filmer's *Patriarcha*, asserting the existence of the monarchical form of government in patriarchal times, was proclaimed. But the truest expression of the period lay certainly in the elections of the "Convention Parliament," whereby (in conformity with the system of 1653 favourable to the Presbyterian party) a Lower House was brought together, consisting partly of Royalists, partly of Presbyterians, with a small sprinkling of Republicans.

In the first period of the Restoration the Royalists and the Presbyterian central party worked still in unison in a kind of enforced moderation, owing to the Puritan army still afoot. Their common aim was the re-establishment of the parliamentary constitution, in other words, the solemn recognition of the hereditary monarchy, and the sanction of its inviolability by punishment of the "regicides," restoration of the Upper House, that is, of the hereditary Lords and the Prelates, re-establishment of the Lower House, with representation of the Counties and of the ancient boroughs, whereby the right of voting was restored to the "pocket boroughs," and withdrawn from larger towns, such as Manchester, Leeds, and Halifax; lastly, the re-establishment of County organization, with removal of the military governors, and re-organization of the

militia as the armed force of the propertied classes.\* To these were added certain dispositions bearing on property; the releasing of Knights' fiefs from feudal burdens, as also the restitution to the Crown and Church of the sequestered and sold estates. The removal of feudal burdens had already been introduced under the Commonwealth, and could hardly be recalled. The Excise duty on beer, already introduced under the Commonwealth, was allowed to the Crown as a set-off, although its incidence certainly fell on quite different sections of the community. As a project of law concerning the restitution of estates to individual "delinquents" was being protracted, the original owners, relying on their own resources, took possession by main force, and ejected the new owners, whereby doubtless some innocent parties suffered grievous wrong, and many of the victims remained unindemnified.

After the settlement of these points the Puritan army was quietly disbanded, without any effort at resistance. The higher classes of Society were, at the same time, re-established in their proper position, to

\* The laws bearing on the Militia passed under the Restoration were meant to form a counter-organization against the Republican army, and an army for defence of property. The right of nomination possessed by the Lord-Lieutenant had the effect that the administrative body and the officers were taken from the county gentry. The great feudal owners (£500 ground rent), and the large town property (£5,000 personal property), had to provide the cavalry; the rich yeomanry (£50 ground rent), and the well-to-do citizens, the infantry. The rest of the population was charged with the duty of equipment *infra classem*, but might be also called upon to contribute in money. All this was aimed against the Puritan army, but was ultimately turned against the monarchy.

the former holders of Knights' fiefs, important releases were granted without payment, and past wrongs, as far as possible, were redressed. With wise foresight the Convocation Parliament of 1661 was now dissolved at the close of the year. Under the re-established influence of the Lords and the old gentry, the new elections returned an almost entirely Royalist assembly.

But although the Restoration had thus been brought about with the loyal co-operation of the Presbyterian party, the ruling party henceforth felt little scruple in declaring the constitutional central party and the Puritans generally as "rebels," and in persecuting all parties of "resistance" in Church and State, as dangerous to the State. In comparison with the behaviour of the Commonwealth in respect to the "delinquents," they fancied that in their repressive measures they fell a step short by merely ousting their political adversaries from their offices in Church and State, according to the system of "purification of the public officers," as is customary in modern schemes of Continental constitutionalism. But as the majority of these officials, according to the system of "self-government," were corporate officials, this could be effected only by requiring such an oath on entering office as would necessarily exclude all conscientious opponents. The "Act for the regulation of Corporations" required an avowal of the unlawfulness of resistance, as a condition of admission, and performance of every civil office. In future, persons chosen had to receive the Sacrament according to the Anglican rite one year before taking office. In like manner, by a new Uniformity Act, the recognition of the Anglican Prayer-Book, and the disavowal of all



"resistance," was made the test for the clerical body, so as to expel the Presbyterian clergy from their livings, notwithstanding all solemn assurances to the contrary. Supplementary police regulations against the so-called "conventicles," *i.e.*, the religious services of Dissenters, enactments for the limitation of the right of petition, and for rendering more stringent the press laws, formed the usual machinery of political reaction, as in later times on the Continent.

The ultra-royalist expressions indulged in, the violent measures resorted to against "resistance," against the Press and right of meeting, might easily give the impression of a retrograde movement as regards parliamentary rights. But, despite the ostentation manifested by the High-Church party, the fact could not be denied that the Restoration was a re-establishment of the monarchy effected by the propertied classes, which, on that very account, arrogated greater pretensions than ever both in the Upper and Lower House. The Peers had already, under Charles I. (1625), established the rule that each member of the House was to receive a summons for each session, the House having at that time refused to sit without the Earl of Bristol, who had been omitted from the summons. The Lower House had already under James I. established the principle, that the boroughs once summoned were to be summoned ever after. Now, also, the right of the Crown to create new boroughs disappeared. James I. had summoned twenty-seven new ones, Charles I. fifteen more. Under Charles II. only the County and City of Durham and the town of Newark were added, but the fixed number of 513 members was not afterwards increased.

The reign of Charles II. appears to have been normally parliamentary, at least in its outward forms. All legislation was at this period grounded on clear majorities in legally elected Parliaments. Nor was any attempt made at exceptional legislation through the agency of the Council. Equally uncontested remained the right of taxation, no underhand attempt being made at raising customs-dues, benevolences, or forced loans. Parliamentary control was, in fact, exercised more effectually than ever. Formal excesses of the administration were even rarer than under the Tudors. The possibility of such excesses was also mainly averted by the fact that even the most extravagant believers in the Divine right of the Crown, and upholders of non-resistance, would not hear of Star Chambers or of High Commission Courts. The influence of the Lower House was materially increased in the financial department, especially through the so-called "Appropriation Clauses." In the midst of the Court and party intrigues there ensued a change, 17 Charles II., c. 1, according to which, to grants of subsidies there was appended a stringent appropriation clause, whereby the Lower House intervened in the budget of State expenditure, thereby securing an unobtrusive but permanently effective influence over the whole range of the public administration. No less characteristic of the period were the dissensions touching questions of privilege in both Houses, as conveying a sense of the general security of parliamentary institutions. The personal steadfastness of an Eliot and a Hampden, and the unconquerable firmness of the Puritan partisans, had left a lasting impression on the general mind that the due limits of

the royal authority dare not be overstepped by any minister without imperilling his life, nor by any king without risking his throne. Charles II. and his ministers were perfectly clear as to the state of the constitutional question. The restoration of the monarchy was by all parties understood to mean the restoration of the ancient prerogative as limited by the "Estates," as it had existed previous to the encroachments of the Stuarts. The Great Charter, the Petition of Right, and the old constitutional laws, were, partly in express words, partly in a practical way, recognized as still in force. It was also characteristic that in the very enthusiasm of their loyalty, both Houses were more zealously intent than ever on strengthening and extending their personal privileges. In 15 Charles II. the House animadverted on the criminal proceedings taken against Sir John Eliot and his companions during the reign of Charles I. With full concurrence of the Upper House these proceedings were declared null and void ; and the absolute irresponsibility of members for their speeches and acts in the House was established by express "resolutions." The exercise of any criminal jurisdiction by ordinance of the Crown against the members of the "Highest Council of the Crown" was thus definitely renounced, and freedom of speech has never since been questioned.

The position of the monarchy as compared to the thus enlarged claims of Parliament was by no means so favourable as might have been expected from the ultra-royalistic theories. But, as under the Tudors, the King continued nevertheless to enjoy a far-reaching influence through his spiritual supremacy and his temporal prerogative ; through the nomination of the

Council and of the Judges of the Realm ; by Acts of Grace, and by influence exercised personally on the members of the Upper House and Lower House, and on prominent local offices. The future of the Crown depended on the use which the restored monarchy might make of its renewed powers.

The present situation of the Realm, which more than ever demanded a monarchical system of administration, was characterised by the fact that the upper classes, restored to the enjoyment of their influence, used it only to relentlessly persecute their opponents in Church and State. This party persecution was nothing new, but hitherto it had aimed only at single prominent persons. Now, however, it was directed by sweeping legislation against powerful parties in Church and State. Formerly it had its head-quarters in the Upper House ; now, mainly in the Lower. Herein also it became evident how the pivot of the Constitution had been gradually displaced, and how much more dangerous in an elective assembly the influence of extreme parties might become in legislative and administrative matters.

The power which alone could hold in check this party spirit was the King, personally liked and influential, and again in a position to exercise his Royal privilege of protecting the weaker side, all the more urgently impelled so to do, that he owed his throne as much to the persecuted middle party as he did to the persecutors themselves. He was bound in honour to afford the solemnly-promised protection to the parties which, as being the majority in the Lower House in December 1648, and which, as last remnant of the

Upper House in January 1649, had stood forth manfully for the right of the King against the violent acts of the army.

But for the second time, at a critical period, we again meet with the peculiar mental temperament of the Stuarts. Disregarding his Royal mission, Charles II. exercised the office vouchsafed to him by Providence with a reckless frivolity, the like of which is not to be met with in the wide range of English history. Of engaging exterior, but hollow-hearted, devoid of principles and morals alike, to this Stuart the Throne was primarily nothing more than a source of social indulgences, according to his standard of pleasure. More destructive than all the adversaries of the monarchy was, for the future, the unexampled fashion in which, since the fall of Clarendon's Ministry (1667), Charles exercised his royal functions in every branch of the administration.

The right of nominating to the Council led, in the hands of Charles II., to the transformation of an honest Ministerial Council to a "Cabinet" devoid of conscience. Even after the withdrawal of the jurisdiction of the Council, this "Cabinet" retained the authority to decide on important measures of internal politics, and as to the whole range of foreign affairs. History has revealed the use made of this power by the "Cabal" Ministry, so called from the initials of the names of the five ministers, as also how under the administration of Desbury and Danby, from year to year the interests of the land and of the national Church were betrayed to Louis XIV. in return for secret subsidies from France. At this time the question of Protestantism no

longer held an exclusively prominent position, but was again interwoven with considerations connected with the balance of power in Europe. To the natural union between England and Holland there was temporarily opposed a petty jealousy prevailing in England, affording ample scope for diplomatic intrigue. When, in 1668, the King found his Exchequer empty, and his Parliament in a warlike frame of mind, he conceived the plan of entering into secret transactions with the King of France, that might lead to his obtaining the money he so much needed. In the course of the confidential correspondence the religious question soon became entangled with the question of money. In January 1669 the King summoned Clifford, Arlington, and Arundel to a confidential conference at the Duke of York's, and explained how painful it was for him not to be able to confess his true belief. These transactions led, in the course of a year, to a secret treaty (1670), in which France promised to pay a yearly stipend of £200,000, by way of covering war expenses, in return for the promised support against Holland, and for the suppression of the discontent in England. After the French advances were squandered, Charles (1674) again applied for £400,000, with the hint that otherwise the Parliament must be summoned, which would at once declare for a war with Holland against France. Louis, however, this time pleaded lack of money, and advanced only one-fourth of the sum asked for, on promise of Parliament being prorogued from November 1674 to April 1675. In subsequent proceedings (1678) Charles II. held to the policy of selling his neutrality at the highest bid obtainable from France.

While the unmeasured aggrandisement of France was filling Europe with alarm, and Parliament, eager for war, was advising an alliance with the States-General, the King met the address with a refusal, on the ground that it dealt with a matter beyond the competency of the House. In this state of things Louis agreed to a further subvention of 2,000,000 livres for 1681, and a yearly allowance of 500,000 crowns for the two following years. While the King was expressing to Parliament his willingness to begin a war with France, and asking subsidies for that purpose, he was actively employed all the time in trying to sell his services to the King of France at the highest possible price. As the legal responsibility of the Ministry of State for violation of the law did not in any case extend to treason on the part of the King himself, it becomes intelligible enough how Parliament came to comprise in their grounds of impeachment the "honesty, justice, and utility" of the ministerial administration, as was first prominently urged in the case against Danby, thus arriving at the notion of a so-called political responsibility of the Ministry.\*

The right of appointing the Judges of the Realm had been already availed of, through the personal influence of the Court, to make the Judges ready instruments of unconstitutional rule. The second period of Stuart rule outdid even the first in this respect. During this reign three Lord Chancellors, three Chief Justices, and six puisne Judges were deprived of their office on

\* Ranke's masterly hand has treated these diplomatic proceedings with his usual acumen, "*Engl. Gesch.*," vols. iv., v., Books 15, 16.

political grounds, and all important offices filled with subservient functionaries. With such a staff of Judges, the elastic laws relating to high treason, insurrection, libel, and the press, were abused in the most flagrant way, the judicial murder of Lord W. Russell and Algernon Sidney having been planned and carried out by the King himself. With this body of Judges also originated the brutal intimidations of the jury characteristic of this period. The crafty manner of dealing resorted to by Charles doubtless prevented such tampering with justice from becoming too public. But in the trial of Barnadistone, obvious to everybody was the course adopted by Charles, who immediately before the verdict promoted to the bench certain Counsel who had been engaged on his side. When the trials began in connection with the "Popish plot," Chief Justice Rainsford was dismissed to make room for Scroggs, who was certainly thoroughly deserving of the confidence reposed in him, inasmuch as he furthered the false charges now in one direction, now in another, and relieved the Duke of York from a serious accusation by suddenly discharging the jury empannelled to try the case. Later on, Pemberton was raised to the post of Chief Justice, mainly for the purpose of directing the trial of Lord Russell, whom he certainly brought to the block, without, however, completely satisfying the expectations of the Court. Still more weighty for the Court was the war subsequently waged against the municipal charters, which was at first conducted under the able leadership of Saunders, and which afterwards procured for Saunders himself the post of Chief Justice. Charles also



repeatedly urged the judges personally to pronounce in his favour, whereby the City of London found itself condemned to the loss of its privileges and to a fine of £70,000.\*

Lastly, the personal influence of the Court on Parliament, and the appointment of the staff of officials, were exercised by Charles in such a way as to procure for the seventeen years' Parliament the nickname of the "Pensionary Parliament." The bribing system followed out by France had also been brought to bear on prominent members of Parliament, although on a very moderate scale compared with the sums pocketed by the King himself. No less baneful was the system of bribery resorted to throughout the whole range of the offices in the gift of the Crown. The character of the functionaries then employed is made clear from the deeply-rooted hatred of the parties between whom these officials found themselves placed, without any kind of support from the Crown. It is significant, however, that probably never has the name of the King and the "will of the King" been mentioned more familiarly by statesmen and clerical authorities, than under the dis-

\* As examples of the kind of penal prosecution for press offences sentences were passed involving penalties of £5,000, £10,000, £30,000. For a libel against the Duke of York, a fine of £100,000 (according to the present value of money from £1,000,000 to £1,500,000) had to be paid no less than three times. As an example of other sentences, Hallam mentions the Scotch Priest Lighton, who, on account of a polemical pamphlet against the hierarchy, was sentenced to scourging and the pillory. Moreover, one side of his nose was to be slit, and one ear to be cropped, and one cheek to be branded; in the week following, the same punishment to be inflicted publicly on the other side, followed by imprisonment for life in the Fleet Prison. The famous lawyer Prynne was twice sentenced to have his ears cropped.

honourable system then prevailing, of which Macaulay, in one of his Essays, says without exaggeration: "Honours and public charges, peerages, baronetcies, regiments, frigates, ambassadorships, governorships, commissions, leases of large estates, contracts for equipments, supplies, munitions of war, letters of grace on account of robbery, murder and incendiarism, were sold at Whitehall, scarcely less openly than asparagus at Covent Garden, or herrings at Billingsgate. Brokers were constantly on the prowl in the ante-rooms of the Court for customers, and amongst these the most successful in the days of Charles were the loose women, even as in the days of James the clergy. From the Palace, which served as headquarters for such a plague, the contagion spread through every department and every rank, and had nurtured everywhere indolence and disorderliness." \*

This mode of exercising the Royal prerogative perhaps sufficiently explains the gradual change of sentiment which, in the course of a seventeen years'

\* But for the accounts given by the Duke de Grammont, and other contemporary testimony, the sketches given by Macaulay in his Essays (iv.) as examples of the Court life of the times would scarcely be credited: "A dead child is found in the palace, the offspring of some maid of honour by some courtier, or perhaps by Charles himself. The whole flight of panders and buffoons pounce upon it and carry it in triumph to the Royal laboratory, where His Majesty, after a brutal jest, dissects it for the amusement of the assembly, and probably of its father among the rest. The favourite Duchess stamps about Whitehall cursing and swearing. The ministers employ their time at the Council-board in making mouths at each other, and taking off each other's gestures for the amusement of the King. The Peers at a conference begin to pommel each other and to tear collars and periwigs. A speaker in the House of Commons gives offence to the Court. He is waylaid by a gang of bullies, and his nose is cut to the bone," and so forth.

Parliament, revealed itself in the feeling of the land, in the subsequent elections, and in the voting in Parliament itself. The malpractices of the administration were the first to be felt extensively. Legislation in a party sense operated in itself more incisely than the former deeds of violence committed by the aristocratic factions against each other. And such legislation in its practical application came home even to the party in the ascendant itself. Still more effectual in this respect was the system of self-government. In the sphere of communal life the unjust and harassing legislation was felt in a far different degree than within the range of official life. In the active life of counties, boroughs, and parishes the ruling classes gained for themselves that sense of moderation which a monarchy, disregardful of its duties, had been unable to observe. Through the neighbourly tendency springing from communal life, even the party-spirit severing Churchmen from dissidents gradually became reconciled. Amid the abuses rife in the administration, there was re-awakened a legal sense of freedom that recalled the opening period of the Long Parliament (1640). The protracted duration of Parliament was well calculated to secure to the Royalist party the full measure of its influence. But party-spirit had in 1667-70 already attained to its highest pitch. At the close a retrospect taken of the numerous impeachments of Ministers and the suspected administrative legislation afford a striking contrast to the feeling displayed at the beginning of the period.

But the increasing opposition of Parliament Charles II. now undertook again to surmount, after his way, by

corrupting the electoral bodies. As bribing the members of Parliament no longer sufficed to secure a majority for the Court in the Lower House, it became necessary to obtain this majority by transforming the electoral bodies themselves. The county elections offered no ground to work upon in this direction ; but it was otherwise with the smaller boroughs, whose manifold municipal constitutions offered free scope for exercising an influence from without. These borough elections had long afforded the landed gentry even a greater personal influence than the county elections, although not to every Lord or Squire, but to such only as endeavoured in some degree to secure the interests of these municipalities. The towns still remained the hotbeds of dissident opinions, from which the national opposition drew its main strength. In order to effect a change in this field the King resolved (1681) to fashion the municipal charters in the interest of Court influence. By the writ of *quo warranto*, which he had hunted up from the administrative system of the Middle Ages, the fundamental principle of "forfeiture of urban privileges on the ground of misuse or contravention of form" was revived. The older charters were thereby cancelled wholesale, to be replaced by fresh ones of an oligarchic type, in the shape of narrower municipal boards, which, like the municipal offices, were to be revocable at will of the Crown. Many boroughs anticipated the sentence by voluntary surrender. In the further application of this proceeding Lord Jeffreys deprived, in London alone, 1,800 fully-qualified freemen of the right of voting, and was still blamed for not having made a

more thorough sifting. Within a few years 200 new charters framed in this spirit were granted, whereby the chief appointments were usually reserved to the Crown.

From these events it will readily be understood how, under this long Parliament, the opposition of a "national party" steadily assumed a bolder attitude towards the Court. The maladministration of justice was met by Parliament passing the *Habeas Corpus* Act, and by the recognition of the fundamental principle of the non-responsibility of the jury in a celebrated judgment of 1679. The well-grounded suspicion of an attempt to restore the Roman Catholic Church was similarly met by the Test Act, 25 Charles II., c. 2. Fresh energy was infused into the parliamentary opposition by the revived sense of self-government and by the incorruptible spirit of the Justices of the Peace and of the Juries. It was this spirit that, amid all the inward and outward erratic impulses of conflicting parties, still held firmly by the right, and which, in the words of Fox, made this period an "era of good laws and bad administration."

Under these circumstances followed, after certain interludes,

#### IV.—THE EXPULSION OF THE STUARTS.

In the last years of Charles II.'s reign the opposition had proceeded to serious measures. The Bill proposed by a minority for the exclusion of Catholic heirs to the Throne had from the year 1681 brought about a schism and a reaction. The worst blunder committed by the Opposition was the scheme advocated by Shaftesbury,

to make the weak-minded bastard, the Duke of Monmouth, heir to the Throne. The opposition had advanced to a position from which it threatened the hereditary monarchy, foreshadowing struggles for the Throne, with which were associated the most terrible memories of the nation. And here was for the first time manifested that fluctuation of party, which has been periodically repeated down to the present day. An electoral struggle, such as had till now been unheard of, was developed, in which the respective parties were designated as "Petitioners" and "Abhorrrers." But from love of vituperation the opposition called the Royalists "Tories," who in their turn branded their opponents as "Whigs." People soon grew accustomed to these mutual nicknames, and accepted from their rivals the designations which have survived to our own times. But the adherents of the Exclusion Bill (Petitioners) lost their majority, and a strong reaction set in, which brought about the fierce war against the municipal charters of the parliamentary boroughs, and kept it raging, so that Chief-Justice Jeffreys was able to boast of making the borough charters fall before him like the walls of Jericho.

In the midst of this favourable current *James II.* ascended the Throne, with a speech well received on all sides, in which he specially promised the English Church his goodwill and Royal protection.\* The newly-elected House declared every parliamentary proposal

\* According to the account given by Barrillon, he promised the protection of the "eglise protestante;" but according to the printed copy of his speech in the *London Gazette*, he promised the protection of Government to the Church by law established.

for any change in the succession to be high treason, and, after the suppression of the Monmouth Insurrection, voted £700,000 for a standing army. The loyalty of the landed gentry, the despondency of the intimidated municipal corporations, a quickly-formed standing army, with a submissive corps of officers (comprised mainly of Irish and English Catholics), an unprincipled bench of Judges, the High-Church clergy with their dogma of Non-Resistance, the disunion of the Protestant sects amongst themselves, disclosed a prospect nothing less than unfavourable. But the triumph which James had easily enough gained over the rash insurrection of Monmouth only brought the sooner to a head his own plan of rewarding the attachment of his people by the ruin of the National Church.

The fulcrum which James thought he had found for his projects, after a precedent under Charles II., lay in the dispensing power of the King. Such a power was looked upon as indisputable, so far as concerned the right of pardon in ordinary criminal cases, but in the sphere of judicial administration it was certainly open to doubt. The Constitution seemed here still to afford scope for James's plan for reinstalling the Church of Rome, and thereby leading the nation back to the notion of a *jure-divino* King. A preliminary condition for carrying out the scheme was the removal of the judicial barriers, by which the decisions of the public tribunals had set limits to the royal privilege of administration by way of ordinances. But these limits James II. contrived to overstep even in a more reckless manner than his predecessors. In the course of three years he brought about the dismissal of twelve judges,

and the elevation of the rude and unprincipled Jeffreys to the post of Chief Justice, Lord Chancellor, and President of a High Commission Court, restored against direct prohibition of law. By way of preparation for the great event, a criminal prosecution was, for form's sake, instituted against a certain Catholic colonel, who had been nominated under Royal Patent, with dispensation from the Oath of Supremacy. The decision of the Court of Law declared for the validity of the nomination, as the laws "of the King were his own laws." But the judgment was not obtained till the Judges holding a different opinion had been dismissed, and fresh Judges, amongst whom two Catholics, raised to the Bench.\* James called this a simple regulation, in order that the Judges might be "all of one mind." With the same view of forestalling justice, there soon followed the dismissal of sixteen Lord-Lieutenants, amongst whose successors twelve Catholics were nominated. In like manner, one-third of the Sheriff's offices were filled, in all haste, by Catholics, and at the same time the entire County militia was suspended by

\* After the expulsion of James II., none of the ten Judges then in office were found worthy to remain. Lord Jeffreys was condemned to civil death, and all the others were expressly excluded from the Act of Indemnity. Under such conditions England learned to value aright the offices of honour, which impart to the official (in spite of his appointment being revocable) full judicial independence, from the mere fact of possession. After the Restoration had withdrawn the pressure of military rule, the Justice of the Peace, in spite of a rather paternal control, and too great a zeal exercised against poachers, was considered to be an honest medium for carrying out justice in a demoralized time. The systematic exclusion from the commission of insubmissive Justices of the Peace, was also found to be ineffectual and impracticable. Justices of the Peace and Juries passed through this period without reproach.



Royal ordinance. The necessary power for any eventual employment of force James thought he had secured by means of his standing army, officered by Catholics, for which the Parliament had so willingly granted the means. Through the High Commission Court, which had been established in contravention of law, with Jeffreys at its head, the necessary disciplinary power seemed to have been gained for compelling the clergy to become Catholics. Now also there was soon everywhere again ostentatiously displayed the monk's cowl, together with the usual Roman Catholic official costume. As the final stroke followed the abolition of the State Church by virtue of an ordinance, under the name of a "declaration of freedom of conscience," through which, by virtue of the Royal prerogative, the subjects were "dispensed" from the statutes enacted for the recognition and protection of the English State Church.\*

However consistent these measures might be, according to the views of his Jesuitical advisers, they were founded on a misconception of the actual position of the constitution, in which the line, as well as the object, of attack, had become entirely different from that of the preceding generation. The Anglican Church had

\* Charles II. had already made a similar attempt at a "Declaration of freedom of conscience" by suspending no less than forty parliamentary statutes; but he had been obliged to relinquish the attempt through violent remonstrances addressed to him by Parliament. The actual Ordinance by James II. was certainly issued with the reservation of a subsequent assent by Parliament; but very soon after Parliament was dissolved without being further referred to. The dispensing power bore upon all criminal laws, and all the oaths of office and tests to be taken. The Pope had dissuaded from such measures being resorted to, but was no longer able to control the "Jesuit party."

emerged with renewed strength from the strife against "Papists" and "Levellers. It had become interwoven more closely than ever with the intimate feelings of the ruling classes, had arrived at a truce with the Parliament, had become "the war-cry" of the Royalist party, in and through the Restoration, and fenced round at all points with new constitutional laws. On the other hand, the power of resistance in the ruling classes had increased through the further development of self-government; the militia, as the only legal defensive force of the land, and their equipment, were in the hands of the gentry, and against that militia, in the absence of a homogeneous body of officers, a regular army could no longer hold its ground. It was, in fact, impossible to have entered upon a more perverted or hopeless course than this. The State clergy, in their clerical and political position of influence; the gentry, in their attachment to the Church of England, and to the organization of the militia; the towns, with their Puritanic reminiscences; the entire nation, with its jealous pride in the National Church, were mortally offended. The first symptoms of opposition, manifested precisely by the party of "Non-Resistance," especially amongst the Bishops, might have still warned the King. But James, absorbed in his belief in the councils of astute advisers, a pessimist in his appreciations of men, hard and wrong-headed even to folly, went headlong to his goal. It was a strange irony of fate that now compelled the most zealous preachers of absolute obedience to afford a most glaring example of disobedience. Owing to their steadfast refusal to read out from the pulpits the declaration of freedom of

conscience, the Archbishop and six Bishops were put upon their trial, but declared "Not guilty" by the jury, and with the boundless rejoicing of the people over this acquittal was closely connected the general uprising of the nation.

The consequences, apart from the dramatic incidents, were, the union of both parties holding for the theory of "resistance" and of "non-resistance" into an actually armed resistance; the invitation to the Stadtholder of the Netherlands; the flight of the monarch, abandoned by all his followers (December 23rd, 1688); summoning of the "Convention Parliament;" transference of the now "vacant" Crown to the Prince of Orange, and the formal contractual arrangement between the Prince and Parliament, whereby all past encroachments of the prerogative were declared illegal. Just as in Magna Charta times the two great parties of the Middle Ages, the Prelates and Barons, found themselves standing side by side for a common aim and purpose, and as in the Restoration of 1660 the Presbyterian party had to afford a helping hand to the Royalists, so the Tories of 1688 found it necessary to stand by the Whigs, for the purpose of expelling the Stuarts. This "glorious Revolution," as it was now styled, was based on no particular party programme, but on the recognition of common preliminary conditions, within which both parties were henceforth willing to move. In the transference of the Crown to William and the daughter and heiress of James, this joint action also found natural expression. The common ground on which the two antagonistic State ideals now met was the furthering of a government of the State and the

Church in accordance with the "law of the land." Upon this ground both parties succeeded in formulating a fundamental principle, mutually agreed upon in the thirteen articles of the "Declaration of Rights," which declare to be illegal the suspension and the dispensation of laws, the maintenance of a standing army, the raising of taxes without assent of Parliament, and other abuses of the prerogative.

The closing drama of the Stuarts and the previous generation were for the life of the nation a period of gigantic advance in self-consciousness, in political wisdom, and matters of general human interest. A clear understanding of the constituent element of a free State, such as already prevailed amongst the nobility of the Magna Charta period, was revived in a higher degree during the present generation. In the cavaliers, and in the heroes of the "resistance," in Hobbes, as well as in Locke, were mirrored the practical experiences of actual State administration. It was the school of communal life, bound up with parliamentary institutions, which, for better and for worse, communicated to the various parties a knowledge of statesmanship, and an actual influence upon the State. It was the habit of communal life, and its morally purifying energy, which, from the very foundation upward, again cleansed the State of the corruption spread abroad by the Court of the Stuarts. But, as in earlier periods, in this deeply-agitated epoch also a legal training continued to make quiet but steady progress, a training which formed a sure foundation for the further development of the Constitution. We accordingly close this stirring period with the—

## V.—CONSOLIDATION OF THE "ESTATES"

on the foundation of which the English parliamentary constitution was destined to reach the highest point of its efficiency.

With the period of the Tudors and Stuarts there was again comprised a space of six generations, which had already, in mediæval times, pretty well indicated the epochs in which were completed the great evolutions of the estates throughout the cultured European world. Lords and gentry had, during this interval, drawn continually closer together, thus soon after merging in the single position of a ruling class. After the ruin of the great and warlike Barons, the landed property of the nobility was grounded, under the Tudors, not so much on a mediæval territorial sway, as on extensive grants of secularized abbey lands and other united domains of the recentlyennobled gentry. The influential participation in State affairs was now primarily associated with the Peace Commissions, which for the most part coincided with the administration of the militia. Hence, in the long run, the normal constitution of these commissions could not fail to determine the legal status of the upper classes in an analogous way to that formerly effected by the organization of the feudal militia. In the landed property of the Lords there was no longer any connection with a district where gentlemen and yeomanry were wont to regard themselves as retainers of some ancient "gracious lordship." The manors of these lords were, like others of the landed gentry, increased through copyhold property, and many other kinds of possession. When the Long Parliament met in 1640, it was computed that the combined income

of the members of the Lower House amounted to £400,000, while their landed property was three times higher in value than that of the Lords.

In the Stuart period this new state of things found expression in a profuse elevation to the Peerage. James I. had created 62 new Peers; Charles I., 59; Charles II., 64; James II., 8; in all 193, which, after deducting 99 extinct Peerages, left about 150 temporal Peers altogether. These numerical relations necessarily led at once to the new fundamental conception, which began to look upon the Peerage as a hereditary position of precedence granted by patent within the circle of the gentry, but not as a governing class in itself. At the meeting of the Long Parliament in 1640 it was already observed that two-thirds of the assembled Earls and Barons had only been created within the last generation. The course of this development was greatly accelerated by James I., who, in his financial difficulties, began to sell Peerages for amounts ranging from £10,000 to £20,000, and of this opportunity four Earls availed themselves in one year. The lack of money urged James still further to increase titles of honour by creating the dignity of Baronet, which was contrary to all English rule, as being a mere title unconnected with any public duty. The original fee for this title was £1,095, and in the course of this period the new dignity was granted to about 900 persons as a kind of connecting link between the political nobility and the wider range of gentry.\* The

\* According to the original statutes, the new dignity of Baronet was in principle purchasable for £1,095, but the individuals seeking the honour had to be of good family, with a ground rent

Restoration completed the fusion by the entire abolition of the feudal connection between title and property, 12 Charles II., c. 24, which declared all property held previously on feudal tenure to be converted into common freehold with all legal consequences. At the close of this period the English nobility had already become a sort of "raised gentry."

But this gentry itself continued with each succeeding generation to acquire fresh expansion through its landed property and the public functions on which its influence depended. Under Henry VIII. the law as to freer testamentary power, and in the seventeenth century the Civil War, had led to manifold change of property, in which the now opulent urban classes were also numerous represented. At first politically, through the Commissions of the Peace and parliamentary life, and after some time socially also, the new landed proprietors became completely merged in the ranks of the old gentry. As Commission of the Peace and Membership in Parliament also comprised the leading men in the towns, these likewise became melted with the same class in ever-increasing numbers. The honorific designation of Esquire, which at the close of the Middle Ages was only occasionally granted, now spread also to such of the wealthy urban classes as were well educated and followed a liberal profession.

The enfranchised County freeholders and the bur-

of £1,000. But as the sale of the 200 patents which had been reckoned on was not so easily effected, these conditions were not strictly adhered to, as being restrictions on the Royal prerogative, which could not be regarded as binding on his successors.

gesses in municipal corporations now took their place by the side of this extended gentry as the politically qualified middle-class. In the county the franchise was limited by the ancient qualification of the Jury to forty shillings income from freehold. But these freeholds became considerably multiplied from the fact that the shilling had decreased in value by one-third. The county freehold class appears in any case to have been very numerous during the Civil War, while through the Civil War itself their consciousness of power was greatly strengthened. They seem, in fact, at times to have exercised a decisive influence in parliamentary elections, in some shires retaining a certain share of influence even after the Restoration. Far more decisive, however, was the structure of the electoral franchise in boroughs, which, by reason of the charters granted between 1681-88, would have assumed a very oligarchic character. Doubtless at the last moment James II. withdrew these measures; but the greater part of the boroughs merely reverted thereby to the manifold municipal constitutions, which had already been previously developed, partly by traditional rights, partly by older charters of incorporation. The electoral franchise was for the most part already limited to a narrower group ("select burgesses"), which comprised within itself the entire borough administration, completed its number chiefly by co-optation within their body, and thus formed a kind of urban patriciate. To the landed gentry these electoral groups afforded a still wider field for exercising their influence than the county elections themselves. The influence derived from the office of Justice of the Peace, from the control of the



militia, from varied family connections and acquaintance, made itself here felt on an extensive scale, whereas the influence of capitalists was locally restricted merely to London and a number of larger towns and trading places. At any rate, there were numerous seats to be found for the Whig gentry among the class of petty burgesses in the boroughs. Besides in this group also of the electoral bodies the principle remained established, that the elective franchise was mainly based on *personal* participation in communal duties and the burden of taxation. But the total lack of uniformity in the various electoral bodies at all times presented in this respect a wide field to agitation, giving rise to manifold fluctuations in the general results of the elections.

Lastly, the classes not electorally qualified in town and county comprised a group, no doubt, personally free, and, as regarded family and property rights, even on a level with the higher classes, but without any active share in determining the course of public affairs, conformably with their general exemption from personal duty in important functions and the non-assessment of the humbler classes to the public imposts. Socially also these classes seem to have somewhat bettered their position, the last remnants of serfdom having disappeared under the Tudors. Copyholders, from being mere tenant farmers, became partly hereditary holders, and partly protected at least against arbitrary ejectment. The leasehold character of the property was thus maintained only in the form of the burdens and charges enforced on change of possession of real estates. The position of labourers without land was improved through the increasing prosperity, and

through the corporate protection granted by the legislation of the Tudors as an equivalent for their control over industry and labour. In respect of the working classes without means, the legislation of the Tudors assumed an earnest solicitude on traditional lines. The Restoration also exercised a pressure only on the political feeling, not on the social position of the lower classes. No tendency was shown, for instance, in the direction of further police interference with labour. Allowing for unfavourable periods, and the decline of some branches of industry, wealth and prosperity increased even in the seventeenth century, despite the Civil War.

Regarded as a whole, English Society presented at the close of this period the aspect of a pyramidal structure, in which the relations of the ruling and dependent classes were gently graduated. At the apex stood the Peerage as culminating point of a landed gentry broadening out downwards and firmly rooted in the county, and of a still more extended squirearchy. Then came the whole body of the ruling class, enjoying a preponderating influence over the electoral middle class; the entire population being thus held together on the basis of equal property and family rights. In this political structure the foundations of the Estates were so immutably laid that the violent measures of Charles I. and James II., of Cromwell and the Puritans, that is to say, two Royalist, one Republican, and one Social revolution, passed away without leaving any outward trace on the body politic.

## VI.

# The Parliaments of the 18th Century.\*

### TABLE OF KINGS.

WILLIAM AND MARY, 1689—1695.	GEORGE I., 1714—1727.
WILLIAM III., 1695—1702.	GEORGE II., 1727—1760.
ANNE, 1702—1714.	GEORGE III., 1760—1820.

WITH the Reformation, the Revolution, the Restoration, and the Expulsion of the Stuarts, the Constitution was formally completed, although a further modification was introduced by the union of Scotland (1706) and of Ireland (1800). The accession,

\* For the parliamentary proceedings of this period, *vide* "Parliamentary History," vols. v.—xxxvi., from the year 1688 to 12th August, 1803, with which the work closes, and is continued in (Hansard's) "Parliamentary Debates" as a new series. About the middle of the period appeared the famous work of Blackstone, "Commentaries on the Laws of England," in the first edition of 1765, and by the close of the century in eleven successive editions. A complete survey of the abundant literature on State Law is given by A. v. Mohl: "Die Literatur der Staatswissenschaften," vol. ii., 1856, pp. 3–236. For the Constitutional History: Hallam, "The Constitutional History of England," vol. iii. (down to the death of George II.); Lord Mahon, "History from the Peace of Utrecht," etc., 1836–1854, 6 vols. (Tory leaning); W. Massey, "History of England under George III.," vols. i., ii., 1855; Th. Erskine May, "Constitutional History since the Accession of George III.;" Ranke, "Engl. Geschichte," vols. vi., vii.

however, of William III. to the Throne indicated, with the Declaration of Rights, the beginning of parliamentary rule by party, which pre-supposes a fresh survey of the fundamental principles of this political system.

The Crown remained, as heretofore, the fountain, the Courts of Law the safeguard, and the Law the supreme controller of the public administration. But through the four hundred years of legislation since Edward I. a reciprocal relation had sprung up between these factors, which surrounded State and Society, State and Church, Local Administration and the "Estates," with firm legal safeguards. These mutual checks, self-imposed by the Crown, operated in like measure as the legal safeguards of Parliament, and as a legal protection for the "Estates," corporations, and individuals. The sanctity and inviolability of this disposition was recognized by a formal coalition of the two great national parties on occasion of the expulsion of James II., and all active movement in the life of the State rests since then on the following assumptions :—

The Law acknowledges the hereditary monarchy as the fundamental institution of the land, and establishes the fixed order of inheritance.

The Law regulates the prerogatives of the Crown, and defines them so as at the same time to secure to the Church the self-government she requires. )

The Law regulates the exercise of the State prerogatives according to the peculiar system of English self-government.

For the upholding of such order of administration the Law guarantees comprehensive legal protection, by means of the administrative jurisdiction.

The Law regulates, in conjunction with the duties of the subject, the rights pertaining to the several classes, out of which a "ruling class" now stands forth, with determining participation in the public administration.

On these firmly-established assumptions is founded the relation of Parliament to the State Government, which will form the main object of the following exposition :—

As *first* assumption appears the *first restoration of the hereditary monarchy*. The deposition of James I. again raised the prospects of a series of conflicts, such as from Norman times had been associated with every fresh break in the lawful succession to the Throne. Of the heavy trials the English people had to endure the frequent changes of dynasty had been those most fraught with peril. To ward off similar consequences, both parties, after prolonged doubts and deliberations, arrived at the following resolution :—

"That King James II. having sought to subvert the Constitution of the kingdom, by infringing the original contract between King and people, and violating the fundamental laws by advice of Jesuits and other wicked persons, and having left the kingdom has abdicated his rule, and the Throne is accordingly vacant."

The fact of the deposition was covered by the fiction of an abdication which, to a certain extent, corresponded with the circumstances under which the King had quitted the country; by the further fiction that the living heir of James II., Prince Edward, was illegitimate (by reason of negligence in recording the birth), according to a belief widespread among the people; as also by the addition of further qualifications in

connection with the event, with a view to exclude the risk of a precedent being established. By reason of such fictions the Crown was transferred to the eldest daughter of James II., in the character of heiress, who, in conjunction with her husband, was now recognized as the lawful sovereign. But as towards the close of the reign of William III. the lack of male heirs began to be anticipated, the definitive "Act of Settlement" ensued, whereby, in case of a lack of Protestant descendants of Charles I., the Crown reverted to the Electress Sophia of Hanover, granddaughter of James I., whose agnatic and Protestant descendants were called to the Throne.

As *second* assumption, there came into play *the regulating of the Royal Prerogative by the Law*. In Germany there was displayed throughout mediæval times a national tendency to regulate the exercise of sovereign prerogative rights by firmly-determined rules, binding on King and people alike. With the close of the Middle Ages this defining of powers had even so far progressed on the Continent that the steady development of legalized administrative functions is to be regarded as the most striking contrast presented by the modern State system as compared both with mediæval and ancient times. In England the prolonged struggle against Absolutism and the misrule of the Stuarts had carried the defining of these legal limitations to an exaggerating degree.

The regulating of the *War prerogative* by the Law was based on the distinction between the ordinary military organization (militia) and the extraordinary creation of a standing army. The militia laws of the

eighteenth century were consolidated with many supplementary enactments by 26 Geo. III., c. 107. In later enactments the effective militia was fixed at 120,000. In conformity with these measures the Lord-Lieutenant in each county nominates twenty or more Deputy-Lieutenants, and all the militia officers, in accordance with a nicely graduated census, from the ensign up to the colonel. The standing army also was formed in a way differing quite as much from that of the Continent. The rude soldiery of Cromwell, as well as the attempts of James II. at subverting the Constitution, had created a lasting impression that every standing army must be a menace to the Constitution. But as such a force seemed indispensable for the colonies, and to uphold England's powerful position, an enlisted army became tolerated from 1689 under the following conditions :—

(1) The acknowledgment, annually made, that the existence of a standing army during times of peace is "against law ;"

(2) The yearly repeated acknowledgment, that this army is not necessary for the preservation of order in the State, but only "convenient for the maintenance of the balance of power in Europe ;"

(3) That the expenses of this army remain dependent on an annual grant of money by the Lower House ;

(4) That the necessary disciplinary powers, as "extraordinary powers," are to be apportioned from year to year by Parliament through a "*Mutiny Act* ;"

(5) Lastly, by the arrangement, that through the

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system of purchasing officers' commissions the body of officers be reserved to the sons of the ruling class.\*

The regulation of the *prerogative of Justice* by law comprised all that concerned the civil and criminal jurisdiction, and still partly rested on custom and "common law," supplemented by manifold statutes since Edward I., which, like the "common law" itself, could be changed only by statute. The appointment for life to the office of Judge of the Realm was since William III. sanctioned by law. The fundamental axiom that the Courts of Law are to decide only by fixed law, and that they are to lay down the rules for their own decision, prevails equally in England as in Germany.

The regulation of *Police* authority had already, in the time of the Tudors and Stuarts, grown into an interminable series of special statutes, completed by reverting to the ancient police authority of the officers of the peace according to "common law," in which again occur the "general clauses" indispensable to police authority. Special local police requirements were met by means of local acts, and also to a very limited extent

\* The notion that a standing army leads to a direct overturning of the parliamentary constitution was so ingrained during the Commonwealth that at the time of intense loyalty (1663) the Parliament declared this a "public grievance." In consequence of the course of events under James II., this notion took all the deeper root, and in conjunction with the fact of England's insular position, induced a conception altogether inapplicable to the States of the Continent. The first "Mutiny Act" (1689) was introduced on account of the insubordination of the first regiment of the Guards (Scotch), in consequence of the nomination of a colonel who was not Scotch.



by means of bye-laws emanating from district and local authorities.

The legal regulation of the *prerogative in financial matters* rested on the distinction between the ordinary and extraordinary revenue of the King. The ordinary revenue comprised the old hereditary income pertaining to the Crown, which belonged to the King independent of any assent of Parliament. This stock of inherited property was greatly diminished through sweeping alienation of domain lands, as well as by the removal of feudal charges, etc., and, in consequence of irregular administration, it became so heavily burdened with liabilities under George III. that this King preferred to make over the administration of the Crown property to Parliament, receiving in return a settled sum out of the State revenues, "Civil List" (1 Geo. III., c. 1), but only under a provisional agreement, whereby the Crown reserved the right to resume the hereditary revenues at every fresh accession. The extraordinary revenue comprised the income arising from direct taxes, Customs, and Excise, based on grants of Parliament. But the permanent needs of the State in the eighteenth century, and the creation of a national debt, no longer admitted of the English State expenses being dependent upon periodical "grants of subsidies." Hence in the course of the eighteenth century all subsidies till then customary merged into permanent taxes; customs and taxes to be levied were accordingly not "granted," but levied by force of law for the Exchequer. The strict legal regulation held good also in regard to communal taxation, in which, by several hundred enactments, the particular object and the rating were settled, no

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individual determination as to the rate of taxation being permitted to local officials, but only an adjustment to the annual requirements.

Lastly, the *Ecclesiastical prerogative* and *government* were regulated by the Acts of "Supremacy and Uniformity" of Elizabeth, and the complementary laws of the Restoration. The position of the State power was safeguarded against any possible excesses of the Church functionaries by the Statute of "*præmunire*" and the enactments connected therewith.

But this latter administrative provision presented the greatest difficulty, for the temporary connection of the Anglican clergy with the Whig nobility in opposition to James II. had in no wise removed the old conflict between Church and Parliament. On the contrary, through the "glorious Revolution" the danger of the subjection of the Church to a shifting administration under parliamentary party government had become more imminent than ever. Through their unconquerable mistrust of such a contingency a great part of the clergy had quickly returned to the loyalist party flag of the Stuarts, seven bishops and three hundred clergymen refusing to take the Oath of Allegiance. This secession of the "*non jurors*" still continued for a generation in open opposition to the dynasty. Symptoms of the same disaffection may be traced even down to the beginning of this century. But as the Whig ministers appointed Whig bishops, the estrangement between Church and State was followed by a protracted estrangement between the higher and lower clergy, and, as a further consequence, by an embittered conflict between the doctrines of High and Low Church. It required about

half a century to remove these dissensions by the conciliatory bearing of parliamentary rule ; by a loyal recognition of the hierarchy of the Anglican Church ; by the retention of the episcopal representation in the Upper House ; by forbearing from further interference with the internal affairs of the Church. Only the periodical general synods of the clergy in Convocation were found to be in the long run irreconcilable with the peace of the Church, and, therefore, since 1717, a temporising plan was devised for suspending the activity of these Convocations by summoning them in the usual traditional way, and then immediately adjourning for "lack of business," a proceeding which was continued down to the middle of the present century.\* As a conciliatory element, there was combined therewith, on the one hand, the preservation and augmentation of the vast property belonging to the State Church (according to the estimate of 1850 amounting to a yearly income of £5,000,000), which had in no previous century been looked after with like conscientiousness ; on the other, the bond of Church patronage shared by Crown, Lords, and gentry alike, in about equal proportion to the influence exercised by these respective sections of the ruling classes. To all this was added the maintenance of the principle that conformity to the

\* The immediate pretext for the suspension of the spiritual synod was the Bangor controversy, an embittered conflict, wherein the elected Lower House of the clergy met to deliberate with the Upper House of the Bishops touching a sermon of the Bishop of Bangor. The determining ground, however, lay in the experiences presented of the overbearing intolerance of such assemblies, which were constituted by election from among the ecclesiastical profession.

State Church was a necessary condition for admission to Parliament, and for obtaining magisterial offices, in accordance with the Test Act, 25 Car. II., c. 2. But, on the other hand, Church property also remained through its whole range subject to the local burdens, while the clergy became an active section of the vestry as well as of the Commission of the Peace, thus gradually forming ever-increasing electoral relations with the ruling classes in the parliamentary system of government. The separate taxation of the clergy had already ceased during the Restoration, whereas, on the other hand, the right of a parliamentary vote was as a matter of course now conceded to the clergy. This introduction of the State Church into the parliamentary State was the last decisive step towards securing a restoration of the internal harmony of a united Church in a united State, with which was revived a more uniform impulse in the life of the nation. During the first quarter of the century dissenters from the State Church in England and Wales would seem to have formed but a small percentage of the population.

As *third* assumption appears the consolidation of the system of *self-government*. The exercise of the so regulated State prerogatives had been permanently and organically combined by the legislation of Edward I. with the shires, hundreds, and boroughs, and, since the Tudors, also with the parishes. If for such a complex structure be employed the expression "self-government" (an expression which even in England has never been legally defined), it is certainly necessary to draw a distinction between official "self-government," which this word principally implies, and the economic "self-

government," which is concerned chiefly with the levying and the appropriation of the communal taxes.

*Official self-government* is intimately connected with the higher offices already created during the Middle Ages. Till quite recent times the English State administration had no other district and local magistrates than such officers within the communal bodies. For that very reason they possess the feature in common, that, being free from any element of manorial or territorial jurisdiction, they are treated as being purely official functions, that they are subject to civil and penal responsibility, to surveillance from the disciplinary authority, and to dismissal, answering altogether to the German conception of intermediate State officials. Such are the offices of the Sheriffs, Justices of the Peace, Lords-Lieutenant, Deputy-Lieutenants, and Coroners. The Constables are subordinated to the Justices of the Peace as executive officials ; while the Churchwardens and Overseers of the Poor and Surveyors of Public Highways hold a somewhat more independent position. As a powerful connecting link to this system of individual functions is added : the immediate co-operation of the middle classes as Civil Jury and Special Jury at the Criminal Assizes and Quarter Sessions, and the share taken by the bulk of the population in the duties of witness or prosecutor. Lastly, connected with the same system is the active duty of the Assessment Committees for the land-tax, for the "assessed taxes," as also for the income-tax introduced from the close of the last century. The much-renowned *independence* of the self-government system does not proceed from any kind of autonomy, but simply and

solely from the position of the honorary office, which, through the possession of property, imparts functional independence to the official body.

On the other hand, the *economic* self-government has its ancient groundwork in the economic union of rural communities, and in the ecclesiastical requirements of the parishioners, which in England became the chief link of union for a local communal organization. Later legislation has made the most important and prominent functions of police in matters bearing on public welfare, especially the charge of the poor and maintenance of highways and bridges, the object of general state legislation. In reciprocal connection with this stands the early introduction of contributions in money into the English communal life. Hence, the economic self-government turns mainly on the system of communal taxation, which, in the eighteenth century, assumed a fivefold aspect: The Church rate, resolved upon by the vestry, according to the annual needs ; the Poor rate, assessed by the Overseers of the Poor ; the County rate, consolidated by 12 Geo. II., c. 29, as a district tax, levied on the footing of the Poor rate ; the Borough rate, for the judicial and police administration, according to the same fundamental principles ; lastly, the Highway rate, supplemented by the still retained manual labour and cartage, for the maintenance of highways. With this series of taxes were connected the offices of Overseers of the Poor and Surveyors of the Highways, their main business being the assessment, levying, and expending of the local taxes. Then, on the basis of these communal offices and taxes, stand the local Parish Vestries as branches of the economic self-

government. But here also the Parish Assemblies show a tendency to decline in the borough administration, their place being taken by "select vestries."

The *interdependence* between the magisterial and economic self-government is accomplished in such a way that the superior functionaries of the local self-government at the same time form as far as possible the higher court of judicature, in order to ensure the carrying out of administrative laws in regard to local administration. Their official duty forms an integral portion of the administrative State law, and the system of communal taxation, an integral portion of the State economy, in a rationally regulated relation to the State taxes. Both elements are inseparably connected together, yet in such a manner, that in the one the character of the magisterial administration prevails, in the other the functions of the expending department controlled only by the magisterial office. However defective the statistics of the eighteenth century, the following numbers may still be approximately determined. We find at the close of this period in England and Wales, 3,800 active County Justices of the Peace (amongst whom are numerous lords), at least double as many gentlemen as militia officers and deputy-lieutenants; about 10,000 jurors employed in the County Assizes, and four times yearly in the Quarter Sessions. Then, in about 14,000 parishes and districts, holding office for a year, at least one "constable," one Surveyor of Highways, two Churchwardens, two to four Overseers of the Poor, and other collateral offices and boards, besides which, about 100,000 persons who are considered only in connection with the Assessment

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Committees. It is evident to what an extent this individual activity must have educated a parliamentary electoral body, which in the eighteenth century was limited to 200,000 persons at the most.

As *fourth* assumption appears *the administrative jurisdiction*, as that element of the English institutions which Continental students of the Constitution have had most difficulty in understanding.

Since the times of Magna Charta, there had been expounded a whole series of new fundamental principles of the administration, first in Royal Charters, later on in *Assisæ* and parliamentary statutes, in the hope that the principle set forth would also be followed. But England soon made the experience that under party-rule these principles were not followed out, and centuries later the misgovernment of the Stuarts showed that the responsibility of ministers in no way sufficed, but that a more intimate and comprehensive legal safeguard was needed in public law.

The ordinary Courts of Law showed themselves to be inefficient for the purpose. No doubt the Civil Courts of Law served indirectly also for determining the limits of public law, inasmuch as they awarded compensation in damages against officials, who by exceeding the limits of official authority (*extra officium*) injure a private individual. In a still wider sense the ordinary Criminal Courts of Law served to determine the limits and execution of the public law, by their decisions regarding offences against the State, and by their judgments in respect of breach of official duty, in which they had to decide regarding the competence of all departments of the public administration. But



this legal protection remained insufficient for the requirements of a parliamentary State, under the inevitable influence of party on the administration. For, after all, such decisions of the Court met only a very small number of cases, compared with the immeasurable series of abuses, which a party-administration has the power to exercise in respect of police, finance, and military matters. The Stuart system of rule also proved decisive in this direction, inasmuch as it led to the complete formation of legal checks over all those parts of administrative law exposed to party abuses. As once in Germany, in England also, the legal control was developed chiefly in the domain of police regulations.

For criminal legislation there was certainly no need of any special provisions. The summary jurisdiction of the Justice of the Peace controlled this region by short proceedings styled "convictions," analogous to the summary procedure in the modern German Criminal Courts. But such provisions were certainly needed for the police administrative laws, in a more restricted sense, whereby such requirements of civil order are regulated as are only to be dealt with through magisterial orders and measures for special cases, after previous examination of the circumstances; in other words, under the form of a police decree, styled in English law "order." An administrative jurisdiction was equally needed for this department of orders, and consequently for those laws and regulations which constitute instructions for the practical guidance of the officials.

But the administrative control of the official duties

of any department can be exercised only within the range of the department itself. During the Middle Ages an imposing array of administrative checks had already been devised, which attained its highest development under the Tudors. By the disciplinary control exercised over the officials, they were compelled to act in conformity with the law, on pain of dismissal from office or by the infliction of a summary fine. By appeal to the superintendents any illegal or undue action exercised by the executive officials was modified or set aside by order of the higher magistrates. Lastly, appeal by way of "complaint" arose from the twofold action of the superintendence, which is not only *virtute officii*, but also on the application of the party concerned nullified any illegal or undue measure on the part of the administration. Under the Tudors, in addition to the Courts of the Realm, as exercising control over Justices of the Peace, the Privy Council constituted a general Court of Superintendence and Complaint. But the gross abuses of its powers under Charles I. led to the abolition of the Star Chamber in 16 Charles I., c. 10, whereby all questions to be decided in connection with points at issue touching "complaints," petitions, or the like, were withdrawn from the Privy Council. But as a High Court of Appeal for redress of abuses in the administration of the county was nevertheless indispensable, it was henceforth left solely to the Judges of the Courts of the Realm to issue, in name of the King, the respective writs in cases of complaint against grievances. The Superior Court of Law (usually the King's Bench) thus became the Supreme Court in regard to

administrative matters, not by virtue of the ancient competence of the Courts of Law, but by reason of a new legal control over this official administration, which was not constituted till towards the close of mediæval times.

But experience very soon showed that a body of judges at a distance could hardly decide on points at issue otherwise than according to the tenour of the returns from the lower courts, hence could afford little effective redress of professional abuses on the part of the police. To render these complaints effectual, a further development of the departmental system was needed in the sphere of provincial and local administration, such as have been developed in German States by the formation of the hierarchy of administrative courts.\* But by reason of the combination of police and judicial functions in the person of the Justices of

\* No "separation between jurisdiction or administration" was necessary in England for this purpose. The office of Justice of the Peace was in its origin at once of a police and judicial character, and it continued to develop in this sense. There existed no cause for changing the system. For the Justice of the Peace stands closely enough allied to the local police administration, to judge the requirements and conditions of police action. He lives in the midst of civil life, in order to keep himself free from departmental red-tapeism. On the other hand, through his possession of property, he enjoys the full independence required by the office of judge, as well as its stability, as the official holding an office of honour cannot be dismissed by mere party considerations. The habitual activity and co-operation of a body of functionaries in the duties of a superior office, unites in one person the office of honour, the feeling of honour and duty of the higher class, and the feeling of honour and duty of the State functionary, and thereby nurtures the character of the office of judge in its best form. Where in the newer legislation the office of honour was filled up by paid magistrates, there also a separation of jurisdiction and administration has arisen.

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the Peace, the designation of a "*jurisdiction*" was maintained in England as regards administrative regulations, and together with the name, the form, and spirit of a judicial proceeding.

All police injunctions containing a restrictive measure touching the person or property of the individual are issued in the form of an "*order*," *i.e.* a decree formally drawn up in writing, witnessed by a clerk, and, in more important cases, accompanied by the signature of a second Justice of the Peace. Against such "*orders*" there was introduced, in the eighteenth century, by numerous parliamentary statutes, an appeal to Justices of the Peace at Quarter Sessions, with all the forms of legal procedure.

For more important police decrees use could already be made in the first instance of the Special Sessions of the Justices of the Peace of a Division (Hundred), the periodical constitution of which also dates from the eighteenth century. The nomination and confirmation in office of local functionaries, questions relating to highways, the granting of public-house licences, and other matters for decision before such Special Sessions were determined by law, so that these sub-districts became an important intermediate stage in the administration.

The Quarter Sessions, which bring together all Justices of the Peace at least four times a year, generally constitute regular appeal courts in criminal cases, and further, district administrative boards for adjustment of the County-rate, issue of police regulations, the granting of licences for slaughter-houses, etc. To this "county business" there was conjoined

the hearing of appeals from "*orders*" of individual Justices of the Peace, and of district sessions wherever by law there is *appeal allowed*, generally with the clause that no further appeal or certiorari shall hold to the Superior Courts of Law.

The ultimate appeal to the Superior Courts of Law against the, for the most part, final decisions of Justices of the Peace, now became more and more restricted to a small number of cases annually, with the following distinctions. A *writ of certiorari* was the legal remedy after inquiry to discover whether the administrative act was issued conformably with the law, whether the respective magistrate was competent, and whether the administrative regulation had been carried out in due manner. Against warrants of apprehension the writ of *habeas corpus* was brought to bear, as legal remedy not only in criminal cases, but also in regard to all warrants of arrest in matters of police, finance, and otherwise. As general subsidiary legal measure, a *writ of mandamus* was added for the enforcement of administrative laws in respect of parishes, municipal and civic corporations, and all other boards and individuals.

The prolonged experiences of English party struggle revealed the weak points where party influence threatened the course of administration. The police administrative measures showed themselves at all times to be the sphere most calling for the protective function of the laws, and foremost among them stands the system of licences, as the department always most open to party abuses. The remaining branches were connected with these functions either as analogous in character,



or complementary to them. In regard to the control of the militia, Deputy-Lieutenants exercised an administrative jurisdiction in relation to questions raised concerning military duty, upon claims to discharge, etc., precisely as in the case of the Justice of the Peace. As to the communal taxes, the special and general sessions of the Justices of the Peace constituted the appeal courts to determine as to the assessment of taxes appealed against. In the sphere of State taxation a guarantee was formed through the assessment boards. The *writ of mandamus* served for the municipal administration in manifold ways as final legal check, especially against illegal resolutions on the part of the representatives of the community. In the ecclesiastical administration, the legal check was afforded by an ecclesiastical Court of Delegates, partly also by writs of the superior courts of law.

As a general *result*, whenever, and at whatever point danger threatened of a misuse of party influence, or of its being employed for electoral purposes, the administrative jurisdiction rendered the daily working of administrative law wholly independent of the constantly changing ministerial control. Consequently the internal administration of the land remained untouched by any change of ministers, or by party influences, which the temporary majorities in Parliament would have otherwise exercised on the officials and on the principles connected with the administration. The experience of many centuries as to the destructive consequences of party system on the administration had completed this laborious structure in the eighteenth century, thus giving to the English constitution a shape,

whereby the conduct of the highest State affairs might be safely entrusted to shifting party ministries without endangering the stability of the administration, or the personal interests of the public officers, or the security and liberty of the subject. By means of such intermediate structure England has, in its own special way, succeeded in retaining, even under party ministries, the unbiased and upright management of the general and local administration, a result in which imitations of parliamentary administration have generally been found deficient, from lack of the necessary foundation, which also for the most part renders illusory all attempts at a reform of the public administration.

Lastly, as *fifth* assumption, appears the *concentration of the ruling class* in this parliamentary system of government.

The influence of the ruling class, already established by the Restoration, was still further strengthened by the senseless action of James II. As with all State revolutions, this also had the consequence of conferring an increase of power on the propertied section of the community. With well-considered moderation the gentry now made use of their influence on legislation, in order, by means of the "qualification," to secure possession of the Lower House. According to 9 Anne, c. 5, the Knight of the Shire must henceforth possess £600 ground rent from freehold or copyhold, and members for boroughs £300 ground rent. A still higher value was attached to the qualification for the office of Justice of the Peace. For those justices, already to be counted by the thousand, by 5 Geo. II., c. 18, 18 Geo. II., c. 20, there is required a

ground rent of £100 hereditary, or for life, or at least twenty-one years' leasehold. Peers are qualified as a matter of course, also their eldest sons and heirs, as also the eldest sons and heirs of persons possessed of £600 ground rent. A high qualification for the militia had already been fixed by the enactments of the Restoration.

The purport of these arrangements in their general connection is too obvious to leave any room for misapprehension.

But, above all, the *military* power was to remain assured to the ruling class, by the formation of the militia under administrative commissioners possessing £200 ground rent, and a staff of officers possessing from £50 to £1,000 ground rent. Compared with this constitutional force, the standing army, dependent as it was on the yearly assent to the supplies and to the control of appointments in the Lower House, was necessarily placed in a very precarious position. It was commanded by officers, whose commissions were purchasable at sums varying from £450 to £6,000, and which were thrown open only to sons of the gentry, from the grade of ensign to that of lieutenant-colonel.

A firm control of the *civil* powers was determined by the qualification of £100 ground rent, as preliminary condition for the office of Justice of the Peace in the county, and still further strengthened by a tacit renunciation, on the part of the justices themselves, of the daily allowance accorded them by law.

A further settlement of this dominant position depending on property resulted from the system of *family entails*. Doubtless the social endeavour of the holders



of large estates to secure the property by inalienable "*fideicommissa*" was not completely successful in England, as the Crown retained in principle the licence of alienating the Knights' fiefs. But the inventive faculty of jurists rendered the existence of family entails possible, by which the inalienability in favour of an heir-apparent might be settled. This privilege, in itself not too excessive, led nevertheless to a disturbance of the relations as regarded landed property, tending to the aggrandizement of the great land-owners, since in the eighteenth century an enormous accumulation of capital was derived from commerce and colonial possessions, which the gentry preferred investing in landed property at home, and in buying up the still existing small estates. It was the combination of these two relations that first prepared the way for the present vast enlargement of estates, concentrating four-fifths of the cultivable landed property in the hands of about 7,000 individuals belonging to the nobility and landed gentry.\*

The gentry, being thus constituted throughout, next

\* A survey of the various aspects of "Entails"—so difficult to be understood—and of "Marriage settlements," is given for German readers in the work of Th. Solly, "*Grundlage des Englischen Rechts über Grundbesitz und Erbfolge*," Berlin, 1853, and of Ompteda in "*Preuss. Jahrbüchern*," 1880, vol. xxxvi., p. 401 *et seq.*, together with the statistic survey of the results. According to Arthur Arnold ("*Free Land*," 1880): 7,000 landlords, as holders of 10,900 estates of more than 1,000 acres, possess more than four-fifths of the cultivable land in the United Kingdom; the Peers alone possess nearly one-fourth; in Scotland, 5 Peers possess a full fourth of the soil. Consequently, the half of England is in the possession of 150 persons, the half of Scotland in possession of 75 persons, the half of Ireland in the hands of 35—the remaining fifth of the soil being divided among a little more than 100,000 owners of more than one acre.

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reserved for itself the seats of the Lower House by persons from their midst, with a qualification ranging from £300 to £600 ground rent. Just as serviceable for the same end were the heavy incidental expenses of every parliamentary election, and the system of non-allowance of money to members, which has tacitly prevailed since the seventeenth century.

Lastly, this position was consolidated by a secondary representation of the most prominent section of the ruling class through the hereditary peers. In this secondary representation, itself independent of all shifting electoral influences, were comprised the gentry, from whose ranks the peerage emanated and within whose ranks the whole family, except the peer himself, remained permanently in the background. The nomination of 268 Peers and 528 Baronets, under George III., marks the culminating point of this perfectly assured position.

By the side of this vastly increased power of the ruling class, there is clearly noticeable a relative retirement of the middle classes, as regards their political and economic significance. No doubt the electoral influence of these classes was still of importance for the conditions under which the ruling classes exercised their sway over the State power, and for the spirit in which this sway was employed; but even so, it could be regarded as scarcely anything more than a moderating element. Now, as previously, the middle class qualified to vote comprised preponderatingly those elements which render service as jurors, and administer the offices of the local community. But through the purchase of the still existing freehold estates, and through

the withdrawal of the politically active Squires from the personal occupation of agriculture, there ensued such an enormous increase of tenancy-at-will, that the habit prevailed of calling the whole rural middle class by the name of "farmers." In reciprocal operation with this agricultural dependence, there stood the growing decline of individual action on the part of the middle classes alike in parishes and corporations, and the simultaneously progressive formation of select bodies and select vestries. To the middle classes, on the whole, there was wanting a cohesion in larger bodies, such as was possessed by the ruling classes at quarter-sessions, on grand juries, and in municipal corporations. The total number of those qualified to vote in the middle of the century was estimated at about 160,000.

On the groundwork of these general assumptions were based the Parliaments of the eighteenth century, which have been regarded throughout the civilized world as standard models of a "constitutional" government in the several relations of a Lower House, an Upper House, and a State administration, as here set forth.

#### I.—THE FORMATION OF THE LOWER HOUSE.

The House of Commons, as now fully constituted, comprised from the time of Charles II. the normal number of 513 members for England and Wales. Of these 92 only were for the shires, and four times as many for the cities and boroughs, whose number had fluctuated since Edward I. between 150 and 261. By the Union, 45 members were added for Scotland, and 100

for Ireland, forming a total of 658, but of whom 40 sufficed to form a quorum.

Through a process of growth, developed during the course of long centuries, the "*Communitates*" had acquired that intimate coherence which has made the English House of Commons the most powerful corporate body in the civilized world, and which, amid the seemingly constant fluctuation of political parties, has rendered it capable of successfully administering the affairs of a world-wide Empire. Were it merely a question of uniting as large a number as possible of intelligent and able men in as uniform electoral districts as possible, many other Parliaments, fashioned on the English model, should apparently be able to achieve as much as their prototype. But in England that prevailing coherence was based on the above set forth foundation of the communal taxes and the self-government system, which, in conjunction with the one National Church, have imparted to English Society a capacity for parliamentary self-government.

In regard to *taxes*, these electoral bodies gained a firm coherence through the system of taxation of real property. The mass of the communal burdens had been increased, by the close of the eighteenth century, to more than £5,000,000 a year, more than all the direct State taxes together. In this state of affairs the Legislature could not shut its eyes to the fact that State and Communal taxes cannot be organized apart from each other, but that, on the contrary, the totality of the requirements of the community should be established according to one coherent scheme. Consequently the old system of periodical "subsidy grants"

should cease, as an extraordinary revenue, inasmuch as it was no less irreconcilable with the then existing requirements of the State than with those of the communal unions. Both aspects of the public demands required rather a legal settlement, independent of "yearly grants." Under this arrangement the Legislature has reserved exclusively to the State *two* out of the three bases: the income tax, customs and taxes on articles of consumption. On the other hand, the State abandoned the old system of a land-tax, so as to gain the full power of expansion of a direct tax for all social purposes in village, town, hundred, and county. This was effected from the standpoint that the foundation of a communal system can only be lasting and uniform when independent of the yearly shifting conditions of persons and property in a population free to move from place to place; that, therefore, the burdens of the communal boards should be apportioned on immovables; in other words, on all holdings (ploughlands, buildings, factories, mines, etc.), according to the productiveness of the objects, and not according to the personal means of the individual; and that on this very account, and in order to equalize the communal burdens between greater and smaller unions, the Poor-rate introduced by Elizabeth should be applied in respect of all communal divisions and counties alike.\* According to these views, the

\* In the eighteenth century the old system of periodical assents to subsidies passed into taxation by law, the taxes till then granted periodically by custom, were now fixed by means of taxation laws and levied for the State-treasury without any special assent of Parliament, fresh taxes, legally determined, being added from time to time. By this new course of tax-legislation the whole

Communal taxes have been fashioned from generation to generation by the Legislature, the practice of the courts, and the administration, and therewith the material bond has been maintained by the uniform burdening of immovables, which form the principal basis of the community, just as the territory of the State forms the basis of the State. The more English Society was in danger of disintegration from base to summit through the freedom of domicile and of the industries, through the cosmopolitan notions of commerce, the nomadic instinct of the rural labouring population, and the gradually growing schism of the communal bodies into different churches and professions of faith, the more firmly did the legislation clung instinctively to the system of taxation of real property, as the vital condition of coherence between the electoral bodies.

On the other hand, *the personal bond of union* was formed by the official self-government: the admini-

system of Customs and taxes on articles of consumption was inordinately stretched in the interest of the ruling-class. A fresh and considerable income-tax (in lieu of the tenths and fifteenths merged in the Land-tax) came again into activity during the course of the great war against France (1798-1815) as a temporary tax. These as well as the indirect taxes remained withdrawn from the communal system of taxation. On the other hand, parliamentary legislation has closed once for all the book of State ground rent, since 1692 making no more entries into the register of lands, and even declared it redeemable (1798), so that it now only endured as a *residuum*, amounting to £1,050,000 (presenting an average of 1 per cent. instead of the originally intended 20 per cent.). The margin thereby procured was now left free for the communal taxes. A comprehensive survey of these tax relations is given by Geo. Goschen, "Reports and Speeches on Local Taxation," 1875. The total yield of the real property was at that time estimated at £143,872,000. According to more recent statistics (Gneist, "Engl. Verwaltungsrecht, ii. 897) the communal taxes on immovables have increased to £25,900,000.

stration of the higher State functions in parish, hundred, and local unions through offices of honour held by the landed gentry, through the jury-system, and the performance of the smaller offices by the middle-classes—supplemented according to need by a few professional officials learned in the law, as well as by numerous subordinates. This system is not founded on any particular preferences in English society for the conduct of public business by unprofessional persons, but on the experience that the office of magistrate is exercised in a more liberal spirit by men of social independence, than by an exclusive bureaucracy, and that, at the same time, defective experience in routine work may be more readily supplied by the numerous clerks than could any defective qualities in the character of public functionaries. A no less important significance attaches to these honourable duties, from the fact that through the possession of property the official enjoys the full independence of the judicial office. It was only by the introduction of these elements of judicial independence that such a system of administrative jurisdiction could be developed, giving as it does its chief mainstay to parliamentary party government. But more important than all these considerations remains the social aspect of the case. This spontaneous activity combines the conflicting social interests in an element common to all—the administration of justice, the maintenance of civil order, and the care for the common weal. While the life of Society separates men according to the interests of property, commerce, and industry, of religion and the professions, the system of self-government serves to teach these same men, in the

accomplishment of their common duties as citizens and men, to know and to esteem each other amid their strivings in common. This is the aspect which lends a value to the cohesion existing in the communal union, a system not to be replaced by any other organization in the world.

But in this epoch the *Communitas* received its full significance in respect of the parliamentary constitution, through the lasting, organic union of self-government with the communal rating system ; in other words, by the personal union of the magisterial and economic "self-administration," which, in contrast to the French, is also peculiar to the German communal organization. This union places face to face with the social contrasts an equally permanent and effective counter organization, and thereby succeeds in uniting them anew, and converting social prejudice into political principle, thus fostering that legal sense whereby a nation is rendered capable of self-rule. The re-fashioned and moderating influences which the conflicting class elements of Society have derived from communal life begets those moderate political parties which are qualified to conduct a parliamentary government after the English method. The elections resulting from such bodies represent a cross-play of common interest and endeavours, wherein the extreme prejudices and tendencies of social classes are already surmounted. From this common ground alone proceed those fundamental tendencies which the England of to-day designates with the appellations "Liberal" and "Conservative," in contradistinction to the purely social (extreme) parties. The kneading of these social contrasts to such a common consciousness,



rather than the sum of the several opinions therein contained, imparts its significance to the combined vote of the *communitas*, as appears most evident from the relatively slight importance attaching to the parliamentary elections of larger cities and of the Universities. From the daily life of these self-governing communities associating together on a neighbourly footing, there arises that common public consciousness which combines the natural diversity of opinions and endeavours of Society into one united will. Just because the internal connection of electoral bodies is the determining element, the striking inequality of English electoral unions was able to continue for centuries, so long as there was on the whole maintained a relatively proportionate representation. But the common will of such bodies cannot be represented otherwise than by the decision of the majority, by the side of which a representation of minorities appears in fact contrary to common sense, just as does the representation of interested groups, and the counting up of disconnected votes. Social life in the counties and parishes was thereby interpenetrated by a spirit of loyalty, and by a spirit of unity, which absolutism, even in its best form, reserves only for its bureaucratic class. But yet another important element which self-government brought into Parliament was the practical acquaintance with public affairs. Certainly three-fourths of the members of the Lower House were, till the time of the Reform Bill, mainly officials of the administration ; not in the State service of the party administrations, but in the self-government system, independent of any change of parties.

In the flourishing period of parochial administration, in the sixteenth and seventeenth centuries, this influence of communal life made itself felt also amongst the middle classes, and was apparent during the Civil Wars. Even in the eighteenth century, the numerous offices of the parish to some extent kept alive this coherence. Only this could not be understood in England without reserve being made for the municipal corporations, which here (in contradistinction to Germany) represented the least developed section of the community. The legislation of the Tudors had certainly extended the system of parochial poor-law and highway officers, and the taxation therewith connected was equally applied to the parishes in cities and boroughs. But this new formation took its own independent course, in connection with the old municipal authorities, which, resulting from the "court leet" and the *firma burgi*, and restricted to the police and the administration of town funds, fell into a position of isolation, in which the activity of the meetings of the burgesses declined, and select bodies took their place. Under the Stuarts, this lack of harmony was intentionally furthered by enforced Charters of Incorporation, and was continued even after the expulsion of the Stuarts with the silent tolerance of the ruling class. According to the population the representation of boroughs was ten times in excess, and this discrepancy was now equalized by a restricting of the electorate, coalescing to such an extent with the dominating influence of the landed gentry, that the Parliaments of the eighteenth century could never resolve upon any measure of reform. Thus the municipal organization

was, and remained a jumble of anomalies, the rectification of which was left mainly to haphazard. Here was the vulnerable point of the parliamentary elections, which in the nineteenth century presented the next point of attack to the promoters of reform.

#### II.—THE POSITION OF THE UPPER HOUSE.

The Upper House forms the necessary supplement to the House of Commons as upholder and mainstay of the existing order of things, consequently for the protection of minorities against majorities, of the weaker classes of Society against the stronger, and for the preservation of the lasting order of the State against the daily changing interests of Society. In this sense, a second representation of the ruling class, through the heads of their most prominent families, was maintained, independent of transient electoral influence. To the already existing body of 166 Peers, at the accession of William III., were added, in the course of the eighteenth century, 34 Dukes, 29 Marquises, 109 Earls, 85 Viscounts, 248 Barons. Among the total number of Peers (372 on the accession of George IV. to the Throne), the representation of the English State Church by 2 Archbishops and 24 Bishops afforded a set-off to the preponderatingly secular character of the Institution.\*

England had arrived at this formation, in deviating

\* Still more evident becomes the growth of the Peerage out of the gentry as we advance further into the nineteenth century, and reflect that in the interval from 1761 to 1870 as many as 591 new Peerages were created, including 140 by the Pitt Ministry alone between the years 1784 and 1801. In comparison with this the twelve or so created in the late centuries of the Middle Ages appear as little more than an ornamental frame to the picture.

greatly from the "Estates" of the Continent. In its origin, this Upper House had come into being as a State Council, upheld by the powerful influence arising from landed possession, and strengthened by the presence of the great lords, who were ready and competent to carry out the *ardua negotia regni* in common with the highest servants of the Crown, and who were also everywhere foremost among the county communities in the discharge of the public and local burdens. But unlike the old French Parliaments, this powerful aristocracy kept in the background the mere official element, and established the official functionaries side by side with themselves only as "assistants." In the periodical sessions of the Royal Council the ecclesiastical and temporal Peerage silently became an estate of the realm, an essential factor of the Legislature, the highest pinnacle of the administration of Justice. After setting aside the Upper House during the short government of Cromwell, England acquired just enough experience of the one-chamber system never to revert to it again. In the older constitutional strifes there existed hundreds of precedents, which brought before the eyes of the nation how unstable was the legislation of the land, and of all civil and criminal jurisdiction, exposed to the daily resolutions of an elected assembly, so long as any change in the laws of the land could be effected without the necessity of obtaining the concurrent assent of the King and the House of Lords. This general view became all the more firmly rooted the more the rapid changes of parliamentary majorities and ministries, even in the eighteenth century, brought home

to the nation the necessity of a firm support for the legal and administrative order.

At the same time England made, during this century, the experience that a State body, which was to hold its own against the tremendous power of the House of Commons, should be rooted, like the *Communitates* themselves, not only in property and office, but also in the thoroughly coherent structure of the State. The Peers, who, according to custom, stood as Lords-Lieutenant at the head of the actual county administration, as well as of the organization and command of the militia, kept alive the notion of a leading position, dependent on royal nomination even in their very union with the Upper House. The same coherence which unites State and Society in the *Communitates*, exists also in respect of the House of Lords. Indeed, the titled Upper House, no less than the Lower House, represents an organic union of property and office; not some imaginary or obsolete function continued by bare titles like those of the Continental nobility, but an energetic vitality occupied with the highest functions of public and local administration. Just as little does it exhibit the representation of a privileged territorial class, which had disappeared in England together with its now defunct feudal associations, but the representation of all landed property discharging its burden of taxation and its personal duties to the State. Even those family settlements, so highly important for social standing, exist for the property of the smallest copyholder with as much legal right as for the wide domains of the highest Peer. An anomalous element entered the Peerage simply from the fact that, in

consequence of the Union with Scotland, a select Committee of eighteen Scottish Lords was elected, and in like manner since the Union with Ireland, a Committee of twenty-eight Irish Peers. The inconsistent element of election in the Upper House has at all times served the purpose of representing class privileges rather than the public functions of the Council of the Realm. It was, however, mitigated, as regarded Irish Peers, by the nominations being made for life, and as regarded the Scottish Peers, by their restricted number ; and further, from the fact that in increasing numbers the Scotch and Irish Peers were under some new title made hereditary Peers of Great Britain. The position of the Upper House in the eighteenth century was thus also thoroughly established in intimate coherence with the *Communitates*.\*

#### III.—THE NEW RELATION OF THE GOVERNMENT OF THE REALM TO PARLIAMENT.

On these foundations was now developed a new position of the Royal Council in relation to Parliament, which, under the name of Parliamentary Government, has for about one hundred years presented itself to the peoples of the civilized world as a goal worthy of their aspirations.

The English State has remained a monarchy, in fact, a constitutional monarchy in a twofold organism, which is described by a short expression : "As King in

\* An attempt was made by the great Whig party, after the accession of the House of Hanover, to limit the right of the King to nominate to Peerages only up to a fixed number. But its obvious purport was speedily detected, and the Bill thrown out by the Lower House (1719).

Parliament," and as "King in Council," implying that, in executing the functions of State, the King is bound either by the concurrent assent of the one, or by the advice and counter-signature of the other. Nevertheless, the events of 1688 brought about a change in the relations of power, which now re-acted on the form of the State-administration itself.

I. *The Privy Council* still remained the constitutional centre of the State administration, but with essential modifications and restrictions of its functions. All jurisdiction of the Council in civil and criminal matters was extinguished with the Star Chamber. The entire police administration, the superior court of appeal of the communal administration, and everything that is capable of abuse throughout the whole range of those invested with office, were established by an interminable chain of enactments, and secured in administrative matters by legal decision. The pivot of the State administration now practically lay in consulting the King as to the summoning or dissolving of Parliament, and as to the proposals to be submitted to Parliament. The deliberations of the now existing Council turned on measures relating to foreign and colonial policy, new laws to be introduced, temporary measures, appointment to important offices when vacant, in a word, all matters for which the ceremonious gathering of a numerous assembly seemed in reality neither necessary nor expedient.

Consistently therewith the current business of the Council was, in the eighteenth century, conducted by a more restricted Ministerial Council, composed of five, seven, or more chief members of the Council, as "the

actual Government of His Majesty" (Cabinet). This form of government showed itself as being the only one any longer practical. Even the great personal influence of William III. could no longer thoroughly succeed in forming a mixed administration of Whigs and Tories; in the years 1693 to 1696, the incongruous elements silently drifted off till only a homogeneous Whig Cabinet remained. William III. was the last to preside over the actual deliberations of a formally assembled State Council. It became evident, from experience itself, that new projects of law and measures of government could be brought before Parliament only by a Government united in itself.\* For that very reason no serious endeavour was made towards reverting to the old treatment of business in full session of the Council. A clause relating thereto in the Act of Settlement was withdrawn even before it came into operation. But as nothing was legally changed, a nominal "sitting of the Royal Council" was held, in cases where an "Order in Council" was required conformable to constitution and law, to which, besides the ministers, certain members friendly to the existing ministry were invited *pro forma* as mere spectators. The Privy Council now consisted only of a ceremonious sitting of the existing Ministerial Council, for formal ratification and publication of such measures as must

\* After a few years William III. satisfied himself of the necessity of a united Cabinet, and let it tacitly occur that at the sittings of the Privy Council, only his Ministerial Council for the time, and a small number of like-minded councillors, should be summoned. Nevertheless, in the parliamentary proceedings of 1701, the Cabinet was still designated as "a hurtful innovation and cabal."



issue constitutionally from the "King in Council." To this new form of State government by a restricted Ministerial Council, was now conjoined the preponderating influence of Parliament on its members and on the direction of its policy as follows :—

II. *In the "King in Parliament"* were now centred all those powers which had been withdrawn from the "King in Council," in other words, the ministers of the Crown for the time in office, now required the assent of Parliament for a whole range of cases that were formerly decided independently by the Royal Council. The cardinal point was, that every constitution has certain open functions, which may be designated as "extraordinary" or "dictatorial" powers, or by some such name, but which inevitably crop up again and again in the relations between State and Society. No human wisdom or foresight can by legislation once for all determine beforehand the limits of the supreme power ; for fresh contingencies, or rather fresh social needs, continually demand fresh measures, for which no adequate legal provision can be made beforehand. In the Republic and Monarchy alike such dictatorial power must pertain to one side or the other, and the element of power withdrawn from the one must always be appropriated by the other. Nations, grown up under a Monarchical Constitution, and which have remained in cordial relations to the Crown, reserve such powers to their monarch, in the well-grounded understanding that they are more safe in the place which through every personal and family interest is identified with the permanent welfare of the community. The English nation, also, has to the very utmost held by

this monarchical tradition with enduring steadfastness. Even after sad experiences in each successive age, the scope of the latent powers of the Royal prerogative was somewhat narrowed by legal definition of individual points, but still courteously, hesitatingly, almost with trepidation. The unexampled disregard of duty on the part of one dynasty through three successive generations, first shook the faith of the nation, and brought about that decisive alteration, which, at the turning point of the "glorious Revolution," withdrew all "extraordinary" powers from the Crown, that had so shamefully misused them. Each separate clause of the Declaration of Rights was only too well justified by what had preceded, and the combined result of this series of negations, and, above all, the absolute denial of the "power of suspension and of dispensing," was, that every remnant of dictatorial power was thenceforth denied to the King.\* But while, according to the doctrines of democracy, the powers thus taken away were to benefit the national liberties, in reality the case stands otherwise. As with the "Sovereignty of the people" itself, the powers thus set free always lapse to the dominant class of Society alone, hence in England also, to the now completely developed ruling class in

\* The influence of this categorical abolition of the dispensing power of the Crown was rightly recognized by the Upper House, and on that account a "proviso" was inserted, to the effect that the scope of dispensations occurring must be defined by a special law. But a formula in that intent could not well be framed, as this lies in the very nature of the sovereign power itself. The maxim remained therefore as an abstract negation, only with the moderating addition in respect of the dispensing power: "as it has of late been exercised," which, with such indefiniteness, could not ensure any kind of protection against impeachment of ministers.

Parliament. But as the requirements of the nation constantly grew with the existing Legislature, as the State required year by year new and extraordinary powers, there was nothing left but for the "King in Council" constantly to revert to the "King in Parliament;" *i.e.*, that the State government was obliged to get the necessary means and powers assented to by Parliament year by year; in other words, to live in continuous dependence upon Parliament. But in the eighteenth century a number of circumstances concurred to increase such dependence to the very utmost. While the existence of a standing army was yearly dependent on the free consent of Parliament, no King of England could any longer dispense with this military power, which was now required for keeping Ireland in check, for upholding the standing of England in Europe, and for maintaining her powerful position throughout an empire which now extended to all parts of the world. Moreover, the establishment of the whole inner administrative legislation by enactments needed for the slightest change from year to year, and thus gradually accumulating to excess, necessitated fresh enactments, "private and local acts," for which was again required the assent of Parliament. Further, the wars carried on by England on the Continent required such unheard of expenditure, and pledging of the national credit, that even in the older structure of the Constitution the Crown would have been brought into an unusual state of dependence on the Lower House empowered to grant or refuse the supplies. The need of a National Debt had already made itself felt under William III., and had even then amounted to £15,000,000, which

for the time was looked on as an exorbitant sum. Through the seven years' war this debt was increased to £139,000,000, by the American War to £248,000,000, and through the French Wars to £840,000,000. It was even more sensibly felt amid the difficult relations of such an empire, that no Royal Council was any longer able to guide the affairs of government even for a brief interval during its contentions with Parliament. From all this there resulted :—

III. *The new relation of the Cabinet to Parliament*, which on these grounds appeared as a practically necessary mutual understanding between the actual State Government and Parliament. But dependence on Parliament means a dependence on the majority, and hence on existing parties. The more difficult grew the enactment of new laws and measures in the great bodies of the realm, the more inevitable did it become to get them passed with the co-operation of great organized parties, and with the advice and aid of their ablest leaders; and in the new and difficult position constantly arising, there remained no other choice but to entrust the conduct of the affairs of State directly to the leaders of the more strongly organized party.

Under the combined influence of all these circumstances the chief centre of State authority was undoubtedly shifted to the Lower House, and for the last hundred years there has been no longer any question in England as to any kind of misgiving about the misuse of State power against the majority, but simply of its misuses *through* the majority. Parliament, instead of controlling the State administration, and

rendering ministers responsible, has to an increasing extent become itself the "ruling body ;" its majority no longer controls the administration of the Empire, but through its action indirectly determines the conduct of the administrators themselves. Thus, the legal responsibility, while remaining unaltered, gives place to a "political" responsibility ; in other words, to a system of ministerial changes, conditioned by the party relations of the Lower House.

The *rapid change* of these party ministries depends, not on any universally valid "constitutional" principle, but again on the peculiar position of the British Empire. Since the beginning of parliamentary rule there have been but few periods in which the permanent direction of State policy was clearly and firmly defined. Such periods were the consolidation of parliamentary rule under the Hanoverian dynasty during Walpole's Ministry, and the contest against the French Revolution under the Pitt Ministry. On the other hand, as a general rule, the position of the British Empire in the vast alteration of its political and commercial relations towards foreign countries and the colonies, as also the very irregular coherence of the several sections of the empire, demanded so frequent a change of measures, that the laboriously combined policies of parties and party-leaders could no longer suffice for the new situation of affairs. But upon every change the experience was repeated that the necessary unity of action could be reached only by forming the Ministerial Council from men, who were mainly at one as to the principal measures of the Government for the time being, and who had secured, or were in a position

to secure, a majority in both Houses in favour of such measures.\*

At each stage of this development the new method of Government rested only on a tacit understanding between the statesmen in office and the Opposition. Without any alteration of the laws, the new system rests on the displacement of the relations of power, in so far that any doubts regarding the constitutional status of the Cabinets have become purely academic questions. On the whole body of the assumptions thus set forth is now grounded in England :—

*The Construction of Parliamentary Parties.* As the dependence of the central administration in Parliament has logically led to change of Ministries, the predominance of the Lower House has in the same way brought about a solid organization of both Parliamentary parties, which in the course of this period have in turn assumed the reins of Government, while the formation of a Coalition Ministry has always served merely as a sort of temporary stop-gap.

\* One consequence of the solidarity of the Cabinet is the development of the several departments into ministries of a bureaucratic character. This may be said even of the office of First Lord of the Treasury, although since George I. his functions are supposed to be discharged by a Board. This corporate character in the central departments amounted to a mere form for the creating of a number of higher official posts. The First Lord of the Treasury takes, as a rule, in the position of a President of the Ministry, the general control of the Administration without any special reference to the Financial Department. The "Junior Lords" are men of trust from the Parliament, whose duties are restricted to giving a joint signature to certain "orders." The sole head of the Financial Department is the Chancellor of the Exchequer. The office of Secretary of State was split up at the end of the century into three ministerial Secretaryships of State.

This party construction was the expression of the solid political and social order as it now stands definitely completed. It pre-supposed a Constitution acknowledged by all parties alike ; a Constitution in which the unquestioned position of a ruling class was combined with a Church system interwoven with the State authority. So soon as this unification in head and members was reached, the fundamental conceptions of the "State" appeared in simplest possible form as two parties, whose political tendencies derive their origin from the constitutional conflicts of the seventeenth century.

After hard experiences, the nation had succeeded in reconciling the antagonism between Society, State, and Church, through the inner development of the respective factors. But the combination thus effected was and remained a twofold organism, collectively and in its several parts composed of political and social elements, hence in constant movement, like the life of the elements themselves. It accordingly remained the object of a twofold consideration, and of a twofold direction of party struggles, according as the State was viewed from the standpoint of the ruling or the subject classes ; and according as the necessary unity of the will of the State, or the unfettered will of the individual, were taken as points of departure. In the Long Parliament of Charles II. the separation of the two parties was already complete. The vague notions that still prevailed during the Civil Wars, and in the times of the Commonwealth, in regard to matters of State and Religion, had been cleared up. Just as in the times

of Magna Charta, the English view of life was already characterised by the practical direction towards set purposes, so, after a strife extending over two generations, between the extremes of Puritan and High-Church theories, the prevailing views reverted to that objective political channel which formulates its systems according to the special experiences gathered from the past.

The gentry had, by united effort, gained the mastery over James II. Parliamentary, County, Corporation, and Church Constitution alike, and the whole legal conditions of the land, were declared to be beyond the province of any royal prerogative. The inviolability of the "fundamental law" was even sanctioned by the expulsion of a dynasty, and the legality of such proceeding became a necessary hypothesis of the actual Constitution. In the eye of one section this appeared as the highest principle of Civil freedom in the State—the right of "Resistance"—the party-word of the *Whigs*.

But on the other hand the ruling class alone actually exercises a decisive influence over the direction of the State power. Through the Parliament it controls the central administration, and through the office of Justice of the Peace the county. Hence it needed a sanctioning authority to exact obedience from the nation. It exercises its powers only in the name of the "King in Parliament" and of the "King in Council." And the moral exercise of its sway is guaranteed, only so far as this power itself obeys a moral law, which for all classes alike finds embodiment in the Church of England. In the eyes of the other section the highest



principle was "Church and State," the party-cry of the *Tories*.\*

Both party principles are the outcome of one and the same condition of things, hanging necessarily together, like the actual State and Society in England. They represent the two several points of view dating from the Middle Ages, which survive in these parties on a loftier level ; with the Tories the thought, inherited from the Church, of the necessity of a settled, permanent State power as foundation of Civil order ; with the Whigs, the social idea of Germanic communal life, as the groundwork of constitutional liberties. The State conceptions, divided in mediæval times between *imperium* and *sacerdotium*, had now become the fundamental conceptions of the united State.

Under the designation "Whigs" and "Tories," the propertied classes throughout the eighteenth century directed the policy of the Government, closely allied as it was with the family traditions and social interests of the gentry. The passwords of parties were still, at the beginning of the century, "Resistance" and "non-Resistance;" next, "Stuarts" and "Hanover;" afterwards, "American War" and then "French Revolution." During the greater part of the century, while the memory still survived of the encroachments of the Crown, the Whig party was, upon the whole, in the

\* During the Civil War a distinction was drawn between Cavaliers and Roundheads ; in the course of the Restoration, Royalists and Presbyterians ; the Court party and the Country party ; at the time of the Exclusion Bill, "Petitioners" and "Abhorrrers;" directly after, "Whigs and Tories," nicknames which were first used at the elections of 1680. "Whig" was originally a designation of contempt applied to Scotch Covenanters : while "Tory" indicates an Irish highwayman.

ascendant. But in the last decade the Tory party decidedly predominated, owing to the prevailing misgivings regarding the submission of the lower classes.

The way in which these theories became established corresponded to the educational level of the times. The theological aspect of the High Church and the puritanic standpoints had, already, during the Civil War and under the Commonwealth, assumed a very worldly character. According to the general run of thought, the prevailing tendency now derived the essence of the State from the essence of man himself. On the one hand, from the nature of free will was developed the theory of a State contract, which, with Locke, becomes an abstraction evolved from the county and parliamentary constitutions ; on the other hand, a scheme of hereditary "authority" was derived from the feeling of dependence and the necessity of control, which inevitably results from the nature of society. In the writings of Hobbes the fundamental conception was undoubtedly evolved from the circumstances of the Civil War. Such abstract philosophizing from the subjective standpoint long dealt with men as with mathematical units, whose sum total constitutes the State. Only after the contrast presented in the French Revolution the truth dawned also in England that State communal life is founded on a moral coherence between classes, a perception that has imparted to Burke's rhetorical fervour a lasting influence. Since the seventeenth century the empirical bent of the national mind also led both parties to a historical basis, where, on the one hand, the original governing power of the Anglo-Norman kings, on the other the

traditional Saxon communal freedom, were treated as the determining starting-points of the respective views. According to the several party standpoints, these theories were then expounded in the light of considerations drawn from later times, and thus became distorted in a way that English historians have still to contend with.

All the more urgent became the maintenance of the existing legal order through a body of lawyers, associated in independent corporations, and through the office of Judge emanating from such corporate bodies. With this century begins for England "a new era of judicial purity." A feeling resulting from bitter experiences had prevented parties from disturbing the organization of the Courts of Law and the Inns of Court, wherein existed the mainstay of public and private right, and now also the judicial firmness of character, which, amid the strifes of the day, strengthened and expanded the existing law. Out of the statutes, precedents, and cases there was established a constantly progressive jurisprudence, which for the first time obtained systematic shape in Blackstone's world-renowned Commentaries. Instead of the pedantic, unsystematic juridical works, wholly incomprehensible to outsiders, here suddenly appeared a well-written and well-digested survey of English Law, so far as it concerned judge and advocate alike in his professional life, disposed according to the universally understood system of the Institutions of Roman Law. Blackstone's chief merit is the impartial presentment in a lucid, agreeable style, combined with a genial optimism, which was able to construct an ideal

system from the English Constitution at a time of notorious corruption in the Whig Administration. Although the legal foundations of the whole system—self-government and the administrative organization—are treated only in a fragmentary way, nevertheless, through its points of contact with classical culture, and with Montesquieu's division of powers, this exposition has for a full century decisively influenced Continental views regarding the English Constitution, precisely because it contained just what was needed, and omitted what was not needed.

For that very reason *the practice of Parliamentary Governments*\* in the eighteenth century was unable in any way to harmonize with the ideas entertained by theorists on constitutional law. For even the ideal principles of the Whigs and Tories could be realized only in conjunction with the then prevailing interests of Society, and especially under the directing influence of the ruling class, as is already evident from the outward form.

Hence the Ministerial Council was at first composed almost exclusively of the higher nobility. Gradually, however, due regard also began to be paid to members of the Lower House, and Walpole (at first appointed merely as Paymaster-General) even

\* From the time of George III. the relation of party Governments to the Crown has been thoroughly treated by May, "Const. Hist.," i., c. 1, 2, 7, 8, a masterpiece of objective writing. Compare v. Noorden, "Die Parlamentarische Parteiregierung in England," in v. Sybel's "Hist. Zeitschr.," xiv., 45-118. G. Lewis, "Essays on Administrations of Great Britain, 1783-1830," London, 1864. Compare also Bucher, "Der Parlamentarismus," ii., ed. 1881.

became in the year 1721 leader of the Cabinet. From that time forth a system of distribution of functions was formed somewhat on the following lines. Court offices were reserved for the leading noblemen of the party in power, and for their adherents, without any direct share in the management of affairs, but with high rank and assured influence at Court. The great offices of State were, for the most part, assigned to the noble members of the ruling party having influence in Parliament, still with a slow, but steadily-growing deference for party relations in the Lower House. For this reason an increased number of ministerial offices was also given to members of the House of Commons who did not belong to families of Peers. A change of Ministry was followed, according to party custom, by a change in the Court offices, a change of the Under Secretaries of State in the different departments, and, in addition, a few secondary appointments (altogether about fifty offices), while of permanent appointments those only which fell vacant in the course of the Administration came within party patronage. These restricted limits on occasion of the change of Ministry show how narrow had become the shifting range of State government, within which the party ministries move.

*But the course of this State government* in its actuality now presented a wonderful changing picture, little corresponding to constitutional ideas from the end of the seventeenth to the beginning of the nineteenth century, down to the period when the rise of a new social order came into play.

Immediately after the Revolution the difficulties

began at once to be felt to which a Government was exposed that required the assent of a majority of both Houses for every important measure sought to be passed. It was fortunate for the nation that during the first generation, when the great questions of European equilibrium depended on the part taken by England, the greatest statesman of the time, *William of Orange*, held in his hand the initiative of the entire Government, though amid constant strife and with but small recognition, his Cabinet changing six times during his rule. Once more the English nation was made to feel that a revolution, even the most just and successful, is a national misfortune, owing to the violent shock given to all the legal and moral foundations of the State. In fact, the conditions resulting from it may be compared to the period following Magna Charta. Never was the discontent greater than now, when all seemed to be achieved. An intriguing nobility, with intricate policies but without any great aim, and a constant capricious change of public opinion, occupy the whole of that first generation. The Whig party, comprising the majority of the nobility, the educated classes in the towns, and Protestant dissenters, continued, in spite of all kinds of legal fictions, to regard the monarchy as their own creation. The Tory party, whose chief strength lay in the old landed gentry and in the lower clergy, insisted on regarding this monarchy merely as a kind of public vicegerency. In mistrustful reserve and undisguised dislike, the old landed gentry, closely united with the lower clergy, stood opposed to the master who had come over from Holland. Four bishops and 300

clergymen had refused to take the Oath of Allegiance. The sullen opposition of the lower clergy went so far, that by a Statute of Parliament, 1701, the clergy had to be bound by a fresh oath to recognize William as "lawful King." Parliament, Church, and the Law of the land had returned to their original position; but the victorious party looked upon this as a natural result, while nobody felt himself socially the better for the change.\* But the Tory party found, to their vexation, that only their old opponents, and conjointly with them, certain foreign favourites, had come into power. This monarchy, though it was the result of an act of political necessity and wisdom, was and remained something strained and artificial. The hearts of the people did not warm to it, and it was for that reason, perhaps, that the King himself had no cordial feeling for England. William's chief aim, namely, to strive against the overwhelming power of France, to uphold the integrity of Holland, and the European equilibrium, was utterly strange to insular views. Instead of the joyous feeling on account of the rescued liberties of the

\* Parallels might be cited from our day. "After bringing into play the noblest faculties, and achieving the highest ideal aims, there comes a reaction, and therewith an unchaining of those social interests which, under the name of 'liberty,' merely understand free play for their own individual efforts. After the grandest result has been achieved for the Commonwealth, man begins to cast up the net result for the centre of his own little world, of his own 'ego,' and begins to count up how much of the happiness and glory of the common wealth has fallen to his share. Disheartened at the small balance of personal advantages shown by this calculation, he yields to the promptings of his social being, and pays his tribute to the imperfections of human nature by taking a pessimistic view of the great achievements, after his former sublime aspiration for a lofty and sacred goal." (Gneist, "Die Preuss. Finanzreform, 1882," p. 247.)

country, a chilling feeling between King and Parliament pervades this whole period. William had already been deeply hurt by the refusal of Parliament to grant him, for more than four years, the Customs which had been accorded to his predecessors for life, as also by the mistrustful resolutions in regard to the maintenance of a standing army, and against the filling up of offices and concessions to subjects not born in England. His honest endeavours to promote clerical tolerance Parliament answered by a mutilated Toleration Act, allowing the ancient laws of exclusion to remain. The answer from Scotland is summed up in the fact that (1690) all the clergy belonging to the Anglican Church were expelled, while the Presbyterian Church was obstinately declared to be the exclusive Scotch State Church. In the year 1693 William vetoed a Bill which was intended to exclude a number of Crown functionaries from having seats in Parliament. In the year 1694 he assented, after much hesitation, to a Triennial Act, which, at all events, did not renew the offensive clauses of the Triennial Act under Charles I. The attempt made at the beginning of his reign to form his Cabinet according to monarchical principles from among men of trust belonging to both parties, proved, in the course of his government, to be impracticable. The root of the evil lay in the fact that the revolt of Society against the State power unavoidably disturbed that coherence by which State, Church, and Society were united in the English *Communitates*, and thus excited social conflicts which for a whole generation could scarcely ever be stilled. After the "glorious Revolutions" there were still endless difficulties to



overcome, from base to summit, in the inner life of the nation, which only disappeared in the course of a second generation.

With William's death this monarchical guidance came to an end, and a return was made to the rule of aristocratic factions, now interwoven with the party groupings of the financially powerful Lower House. Under the reign of the feeble sovereign, *Queen Anne*, party aims became so deeply identified with family and particular interests, that we look in vain for the constitutional ideals of the respective parties. The Whig standard bears the inscriptions: Septennial Parliaments, French war, the old commercial policy, "No Popery." The Tory standard: Triennial Parliaments, opposition against the French war, against protective duties and trade restrictions, union with the Catholic faction in England and with the National party in Ireland. The want of monarchical guidance had at last been to the advantage of the Tory party, and, to please them, a batch of twelve Tories was introduced into the House of Lords (1711). In the extreme elements of the party the hope of seeing the old dynasty restored was again revived. At the death-bed of *Queen Anne* the return of the Stuarts seemed to hang only upon an intrigue among the nobility. It was one of the after-consequences of this government by intrigue that after great successes in foreign policy the peace of Utrecht brought about the last great impeachment against Ministers, in the person of the Earl of Oxford, when the "honesty and utility" of a ministerial Administration in foreign affairs was once more questioned.

It was only at the commencement of the reign of

the House of Hanover (1714), under *George I. and II.*, that the lasting preponderance of the great Whig party was decided, the policy of that party being to maintain the legitimacy of that dynasty. And with the consciousness of decided power the great aristocratic party also began to feel a responsibility for the welfare of the country. Foreign affairs were managed by the two Georges more independently than appeared to the outside spectator. But to gain the necessary majorities in Parliament for internal State rule the old monarchical ways and means could no longer be made use of by the parliamentary party. Hence there remained nothing but a cleverly manipulated ministerial patronage of honours and offices, a careful management of personal and local interests, as also a strict party discipline for the maintenance of the majorities. It certainly took more than a generation before the schooling of the parliamentary parties was completed, under the discipline of an acknowledged leader. The practical necessity of a uniform will and the love of political power at last accomplished this task. The Administration of Walpole was thus enabled to take further measures to promote material interests, and his efforts in the service of trade, finance, and the welfare of the land were scarcely adequately acknowledged by his contemporaries. Whig rule, now in close connection with the Crown, was in a position to hold the reins of government with tolerably firm grasp; it was computed that the Whig nobility had at its control 140 electoral districts, and the Crown about 70. The hare-brained attempt at invasion planned by the Jacobites (1745) dealt an incurable blow to the

Tories, while putting an end to any further intriguing with the expelled dynasty, and with all conspiracies in general. Under these circumstances the policy of "masterly inactivity" introduced by Walpole was assuredly the right one. It served to concentrate the strength of the nation, both reconciled and accustomed it to the rule of parliamentary party which had now become inevitable, and while the too great fondness for peace displayed by this Government was blamed, yet in the course of the Seven Years' War England certainly derived the chief advantage from the conflicts on the Continent, and laid the foundation for its world-wide naval supremacy. Amongst the now satisfied sections of English society that buoyant feeling was revived which has led the present generation to assign to that period the name of "Merry England." Certainly, by this fashion of governing, the Whig party relinquished the ideal groundwork of its policy, since the principle of "resistance" had lost its point. It became nothing more than a union of the great aristocratic families, combining in the Lower House a majority for the promotion of agricultural and commercial interests; but this majority once assured it again split up into exclusive sections. In such state of things, in all matters affecting personal interests, intrigue and a mercantile spirit were found to prevail. A kind of bribery had been first initiated in Parliament in the shape of fees for attendance ("retaining fees"), in respect of the Scotch members, and developed subsequently into direct money payments, pensions, and sinecures. The Crown had allowed these proceedings to run their course. In 1742, however, there was launched a new "Place Bill,"

which declared that the holding of certain offices was irreconcilable with holding seats in Parliament. Significant at this period of developed party rule was the extension of the Parliamentary Sessions from three to seven years through the "Septennial Act," 1 George I., c. 38; and further, a fruitless attempt to restrict the Crown from the nomination of Peers (1719), and likewise the immoderate pretensions of Members and the prevalence of disputes in the matter of privileges, just as at the time of the Restoration.\*

\* The intermingling of the ministerial Administration with the parliamentary body had, amongst others, the result that many prejudices of bureaucracy crept into the uses of Parliament, such, for instance, as secret sittings. While in the years 1680-1694 the printing of the parliamentary debates and votes had been carried out without objection, Parliament now insisted strictly on the secrecy of its proceedings, and on the exclusion of strangers. In the years 1728-1738 the publication of the proceedings was sternly moved against as a breach of privilege. Still more pronounced in this respect was the arrogant pretension assumed of the personal dignity of a "High Councillor of the Crown." The sacred character of a representative of the people was at this period extended to his servants, and even to the hares and rabbits belonging to a member, till in 1770, in consequence of flagrant abuses, all such excesses of extension of privilege were set aside. In the course of the century the Lower House was more than once reminded in a sensitive manner that its resolutions are not laws, but only bind the House itself. The most offensive case was that of the scandalous election of Alderman Wilkes, which by the fault of all concerned led to the humiliating confession that Parliament possessed no omnipotence. On the other hand, party spirit was so powerful in this elected body, that the Lower House was not able to carry out with due decorum its quasi-judicial decisions as to the validity of the elections to Parliament. Walpole had himself, as head of the Ministry, already issued the watch-word that "no quarter should be given" in these contested elections. The coarse party spirit had become so offensive that the Grenville Acts of 1770 substituted the decision of a small committee, ingeniously composed, in lieu of a decision of the whole House. But as these committees also in course of time fell under the influence of the old party spirit one hundred years later (1868), the decision as to contested elections was made over to the civil judges of the Courts of Law.

*George III.* (1760–1820) ascended the throne with the determination to put an end to the prevailing party government, and to give effect in the State to the personal will of the monarch. Born on English soil, he was the first sovereign of this dynasty who felt himself an Englishman in the full sense of the word. But in order successfully to encounter a parliamentary rule for two generations in the ascendant, there was needed a dominant spirit, a solution of great national questions, and a skilful choice of men of capacity to lead the Parliament. But in the first decade of his reign the youthful sovereign lacked both measures and men. The beginning of his rule, with Lord Bute as Prime Minister, and the attempt, after the fashion of his German Electorship, to punish refractory Members of Parliament by the withdrawal of their pensions and offices, could prove of little avail in England. Hence he soon reverted to the method of Walpole—to purchasing votes by means of acts of favour and money presents. In one day alone, under Lord Bute's Ministry, £25,000 are said to have been expended in the purchase of votes, and this practice was continued under Lord North, to the complete exhaustion of the Civil List. George III., through such devices, certainly managed to thwart, by means of his personal adherents ("the King's friends"), the rule by parliamentary party, and more than once, despite the honest intentions on his part, he even contrived to jeopardise the true interests of the State. But all the less did he succeed in setting aside the firmly-established power of the nobility. Abortive attempts in that direction even compelled him, for the first time, and against his

openly expressed intention, to have recourse to a Coalition Ministry (1782). At the same time, by the "Civil List Act," the fountain-head of the bribery that had prevailed was stemmed, while by a new "Revenue Officers' Act" the bulk of the taxing officers, through whose intermediary George III. was said to have disposed of seventy seats in Parliament, were deprived of their right to be elected to Parliament, and from this turning-point begins the regular practice of change of Ministry, dependent on the majorities in the Lower House. The Crown had, however, again become a positive factor in the will of the State, and it exercised great influence from the time that, jointly with the reanimated parties, it began to pursue popular purposes and aims. Such important aims had originated, in the case of the English Government, in the struggle with the American Colonies ; \* but the greatest effort was that of the mighty contest against the French Revolution. Only with the entrance of the Crown into the strife of parties, does the era of great statesmen begin, with whose renown the modern judgment of Europe on the English Constitution is closely interwoven. The real aim of George III.'s life, and of

\* In the course of the American War George III. had at times, in his own person, represented the interests of the State in firm and manly fashion. The question must not be judged according to the colonial policy of the present generation. The reproach of being cowardly lovers of peace, directed against the Administration of Walpole, might have been deserved by George had he (regardless of the consequences of maintaining all the English colonial possessions) left the rebellious colonists to themselves. Nor would the United States of America have scarcely ever achieved a vigorous constitution likely to endure, had they gained their Independence through "abandonment," instead of by the honest and manly struggle to which they owe

his statesmen, was the contest against France, whose social revolution was utterly at variance with the inmost essence of English Society. For this very reason, on this State and its energetic aristocracy, the great task had devolved to countervail the universal empire of the new Cæsar, and to assume the leadership in resisting the over-flooding of Europe with the destructive doctrines of that social upheaval. At the period of this struggle, the dominant mind of Pitt stood at the head of a firmly-disciplined party, which, in accord with the King and the mass of the people, exercised influence over a safe majority of the Lower House, and disposed of an unlimited State power, till the triumph was secured of the national and international cause (1815).

Even at this height of success, there, however, remained unsolved the problem how to obtain and preserve the necessary unity of State action by means of an assured majority in the Cabinet, in Parliament, and throughout the electoral bodies. The present party rule found itself thereby placed in a new and critical position. Since it was no longer consistent with the increasing influence of publicity to purchase

the best features of their constitutional "Union." In like manner, George might, with full right, assume to himself the credit of being, amid the savage Gordon Riots directed against the Catholics, the only magistrate who did his duty. Again, it was his merit, that by a quick resolve at the last moment, the country was preserved from the inconsiderate India Bill, which Fox had already piloted through the House of Commons (1783). George III.'s stern opposition against the Catholic Emancipation did not apparently proceed merely from a scruple of conscience in respect to the oath taken on his accession, but was founded on his deep insight into the immeasurable consequences of the step for the constitution of the country.

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the votes of individual Members of Parliament, party practice sought at this time to gain over the electoral bodies by crafty means. Direct action for the furthering of Ministerial elections through police interference, such as constitutional Ministers on the Continent so promptly learned to bring into use, was in England utterly barred. As "self-government" and administrative jurisdiction did not admit of any threat of consequences to influence votes at elections, nothing remained except the promise of benefits to come—a kind of corruption, certainly not for private advantage, but for the furthering of an administrative system regarded as in itself rightful. The smaller towns and the Scotch electoral districts afforded a fruitful ground, where the smaller landed gentry and the classes grown wealthy in towns eagerly competed for the proffered rewards. For the votes of the smaller boroughs there had already, somewhat earlier, been established a kind of commission agency, determining the prices at which the "Brokers" should offer such seats, at from £2,500 to £9,000. Even the numerous electorates in some counties showed themselves at times purchaseable, as in the case of Gloucestershire, which was once sold for £30,000 (1779). Repeated Bills, introduced for the severer punishment of such abuses (1782–1786), found no acceptance, as neither side was in earnest about the matter. No less a man than Sir Samuel Romilly considered disapproval of such means as nothing short of "a moral superstition." This system it was that disfigured the most renowned period of parliamentary rule, still constantly revealing the fact that even this Parliament was by no means a



mirror of virtue. It shows how the history of party views and party men, with their groups of family connections, with their human weaknesses and petty jealousies, renders it hard to realize the greatness of such a State system in its complete development.

At no period has this parliamentary rule obtained, without exercising at least a gentle violence on the aspirations of Society, in themselves doubtless lawful enough ; yet it has apparently ever been so under all free Constitutions. Rest and progress in the State alike demand in such a Constitution an independent activity of parties in their internal conflicts, which stir up at one time disorder, at another the fiercest passions in the ever-broadening circles of the community. This continuous concentration of numbers to some single purpose necessitates the employment of drastic party measures, the submission of the individual to the iron discipline of the party, and so many feelings of mortification and abnegation on the one side, and of disenchantment on the other, that the period of a free State has never been one of ease and contentment for Society in general. It seems to be the destiny of mankind that, as the individual has to struggle laboriously towards moral order and rectitude amid the constant temptations and shortcomings of his sensuous nature, the community has in the same way to keep steadily in view the absolute precepts of State and Church amid the constant errors of its social nature. The knowledge of the practices of those Parliaments, even when at the acknowledged height of their activity, may serve to convince the peoples of the civilized world that we may tack on an elected House of Parliament of any cast

whatsoever to the body politic, but that we can thereby achieve an imitation only of the *outward uses and abuses*, not the essential qualities, nor the successful results of this political edifice.

This powerful body has drawn such sound and indestructible vitality, not from itself, but from the communal "cellular system" on which it is based, just as in the case of the new expansion of political life in Germany. But the vast expansive power of the nation rests on the free development of individual capacity unhampered by any class privileges, and on the enterprising spirit and energy of a seafaring nation, which, since the time of the Seven Years' War, being favoured by the general condition of the world, has been able to build up an imperial State comprising, at the present day, a sixth part of the inhabitable world, and nearly one-fifth of its population. Measured by the final result, this State development presents an imposing picture. But the inner vitality of this communal life is not centred in Parliamentary forms and rights, but in the fact that, amid all conflicts of social interests, the education of the nation throughout all its sections was still directed towards the State as a goal, quickening the national feeling for public life, uniting in this sentiment all classes of the community, and, above all, imparting to the higher sections a manly buoyancy and energetic spirit, which finds its realization and its reward in the position the individual assumes in the State. Not by the forms of parliamentary rule, but by personal activity in the daily work of the State, has the greatness of England been created, as was once that of Republican Rome. The several elements of the political

system are uniform, simple, and earnest, as in old Roman life itself, far different from the glowing pictures formerly spread throughout Europe by the author of the *Esprit des Lois*. But these simple institutions are firm and deep-rooted, and when put to the test under great trials, they display the vigour and moral greatness of a proud and free nation. In the struggle against the American colonies, and still more against the French Revolution, the results clearly showed what the training of a people for the *ardua negotia regni* really means. In old England, on a material groundwork, representing in extent some three of the larger Prussian provinces, there grew up a State, which incorporated Wales, Scotland, and Ireland, colonised North America, appropriated the more favoured part of Asia and the new Australian Continent, acquired the empire of the seas, and by its deeds of prowess took its place by the side of the great military Continental states.

The colossal grandeur of this development naturally attracted to England the wondering gaze of all civilized nations, and most irresistibly at a time when a free development of Society, whether in France, Germany, or the United States, offered no ground for comparison. Down to the end of the eighteenth century England stood forth in the European world as the only free first-rate power among the great powers which were at the head of the *ancien régime*. Apart from a few minor political systems, England, amongst all the peoples of the Old World, was the only nation which in long and honourable struggle had triumphed over absolutism in State and Church alike. It seemed as if this race were destined by Providence to keep alive in the European

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world of the eighteenth century the conception of the free State, in order to make it a common heirloom for the Europe of the nineteenth century. There was not here, as in the ancient State, any sacrifice of social and individual for the sake of political freedom. For the first time in the history of the world the conception of liberty was fully realized in a great State system ; *social liberty*, that is, the possibility for the lowliest, by merit and talent, to acquire fortune and honours ; *personal liberty*, which, amid the plenitude of the State power, maintains respect for the person and property of the individual ; *political liberty*, implying the capacity of the people to legislate for itself, and to enforce of itself its own laws, through its own free self-government. What to a one-sided view might appear a limitation of liberty, was, in fact, only the fulfilment of its whole scope, so far as it lies in human nature to reach such an ideal. But here also to the many bright aspects corresponded many a deep shadow.

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## VII.

### The Parliaments of the 19th Century down to the First Reform Bill (1832).

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IT is in accordance with human nature that every onward step in Social, Ecclesiastical, and State progress should evoke contradictions, inequalities, and acts of injustice, still creating fresh problems in the evolution of nations.

If the greatness of the political development was achieved since the epoch of Magna Charta mainly by the courage, insight, and love of freedom of the higher classes of Society, still its fruits were matured chiefly to the advantage of the aristocracy. Consequently the English political system has also its darker aspects, which inhere to every aristocratic State structure owing to the continued pressure exercised on the weaker classes. Although in the hands of the best aristocracy in Europe, yet during the *régime* of the eighteenth century no provision was made for promoting the interests of the lower orders, for which the Stuarts also had assuredly left no example worthy of imitation. For the maintenance and relief of small holdings next

to nothing was done at this period, whereas the large landed properties were being continually increased. The landowners themselves had never shrunk from the burden of taxation; but only under their influence could that accumulating system of indirect taxes and protective duties have been brought into active operation in favour of agriculture and commerce, to the detriment of the working classes, as well as the squandering of the public revenues and the excessive increase of the national debt to the general disadvantage of the State. Only under a ruling gentry could be maintained a condition of civil justice, which, owing to its costliness, was rendered inaccessible to the humbler classes, and wherein side by side with efficient forms of criminal procedure there existed a confused mass of criminal laws disfigured by enactments introduced to suit the occasion. To all this were added the lack of effective sanitary regulations and a Poor-law Administration, which wasted its resources in a narrow-spirited interpretation of the laws of "settlement" devised in the interests of the great landed estates, and which, despite a high poor rate, overburdened and embittered the social position of the working classes. The manner in which the Anglican Church and the parliamentary constitution had come to terms had certainly proved to the benefit of the structural uniformity of the constitution; but the corporate independence of the wealthy State Church was reconstituted with perceptible indifference to the lower classes, whose interests were beneath the notice of a fashionable and worldly-minded clergy. In a like position were the Universities, vindicating their corporate independence to the neglect of

their scientific work. Science, so far as it was not established in corporations and foundations, was left to the energy of the individual and to the patronage of the great, inaccessible to and unheeded by the general public. But, above all, the wealthy Anglican Church now rivalled the powerful Roman Church itself in its utter neglect of popular education. In the pyramid of the social structure negligence, poverty, and depravity penetrated down to the lowest depths, while in the cumbrous framework of the parliamentary constitution the difficulties accompanying every social reform increased to such a degree that in England the most prominent statesmen of the eighteenth century were almost as undisguised advocates of enlightened absolutism, as the highly cultured classes on the Continent had become admirers of the English Constitution.

In spite of all shortcomings, so firmly established was the *cohesion* in this Constitution, that at the turning point of the century there seemed as little prospect of revolution as of reform. The mass of the working population was, in fact, still practically attached to the soil, and revolutionary ideas were likely to find access in but few circles. On the other hand, the position of the ruling class was so firmly grounded, and so strengthened by the national struggle against French Cæsarism, that all direct attacks against it were necessarily in vain. The ideas of the French Revolution, and of the emissaries of the Jacobine Club, no doubt proved to some degree contagious ; but only amongst a small restless circle of fanatics, and of some few doctrinaires belonging to the ruling class. This fanaticism prompted even to acts against the person of the monarch, and to

violent tumults, which broke out sporadically in tainted districts. But with the usual police measures, and, in a few cases, by resort to military force, these attempts were suppressed, the only results being a few parliamentary enactments for the suppression of revolutionary pamphlets and clubs, a "Traitorous Correspondence Act," an Alien Act for the control of intercourse with foreigners, and certain moderate measures connected therewith, which were passed by large majorities in Parliament. The dominant feeling of the nation was to such a degree absorbed in the issue of the war against Napoleon, that there was absolutely no desire for internal reforms.

The conclusion of the mighty struggle (1815) was at first followed by hard years of bad harvests and commercial and industrial crises, which afforded a fertile soil for social political agitation. This is the period of extravagant demands, and of great and even violent popular meetings, which did not pass off without serious loss of life and property, calling for a series of transitory parliamentary enactments (Lord Sidmouth's Six Acts), which were again passed by large majorities, though they did more towards restricting the Right of Petition than was needed under the circumstances, or advisable in the actual state of the Constitution. The course of Government appeared to be somewhat fluctuating under George IV., not without the King's fault, with repeated change of ministries (at one period as many as four in the space of eighteen months). But the bearing of the propertied classes left no doubt as to their resolve to maintain their position with all the means at the disposal of the executive.



Just as formerly, in the twelfth century, the first breach in this firm bulwark originated in the ecclesiastical relations. If the National Church, after the abortive attempts of the Stuarts, achieved unquestionable sway in England, and in the course of the century had become reconciled and coalesced with the ruling class, this great result was again gradually followed by a worldly spirit on the part of the clerical body, attracting the upper sections of the clergy to the high life of the aristocracy, leaving the greater part of the local parishes to be looked after by poorly-paid curates, themselves indifferent to the growing spiritual needs of the rapidly increasing population. As on the Continent, the period of enlightenment here brought about, together with the sense of religious tolerance in the higher strata, an indifference to the education of the labouring classes, which already, in the latter half of the century, led numerous sections of the populace towards a Methodism which offered to the yearnings of the soul what the worldly State Church withheld. This Methodistic dissent, though still without political aspirations, served nevertheless to loosen social unity, and, according to strict right, even to a severance of the political bond of the nation. Through fear of "Popery" the "glorious Revolution" had allowed to remain untouched the Test and Corporation Acts, which excluded Dissenters generally from offices and from political rights. But a manifest contradiction with such an exclusive attitude of the State Church now arose through the union with Scotland, where the Presbyterian Church, by law established, in its turn excluded the English State Church, while Presbyterian and Anglican members had

now to exercise the highest political rights side by side in the English Parliament. Since the accession of George II. to the throne, this contradiction was got over by ignoring Protestant dissent in the matter of official appointments, and by declaring, through the continually recurring "Indemnity Bills," any transgression of law which had occurred, as unpunishable. Thus the Dissenters were brought gradually on an equal footing, as was, in fact, demanded by the increasing spirit of religious tolerance. On the other hand, the exclusion of Roman Catholics from all political rights was strictly adhered to with undeviating persistency. There even still existed statutes excluding them from the acquisition of landed property, as also draconic criminal laws, which were, however, practically suspended. George III. and the greater part of the nation looked upon that Church not only as an ecclesiastical, but as an eminently political institution, which, by its extension to all nations of the habitable world, by its claim to the outward control of the life of nations, as well as to a total submission to its Spiritual Head, was irreconcilable with the constitution of the land. In George III.'s mind this notion was so firmly rooted, that all attempts at passing an Act of toleration broke down before his dogged will.

The breach in this direction was not brought about till the introduction of the coercive measures consequent upon the *union with Ireland*. The government of the "Emerald Isle" had for centuries formed the darkest spot in English parliamentary administration. The antipathy of races had been deepened since the Reformation by the resistance of the Roman Catholic

Church, to which the greater part of the population had remained faithful, whereas the conquering and settled Protestant population preponderated in the landlord class, in trade and industry, as the propertied class. For these the island remained a conquered, in some respects, a colonized land, which, even in the eighteenth century, was still administered in a way that only too vividly recalled the Provincial administration under the ancient Roman Republic. This state of utter neglect and inconsiderate plundering could no longer be continued, since the war against the American colonies made the military occupation of Ireland a task of great difficulty, even rendering the employment of the natives in the standing army and as volunteers unavoidable, while soon after the rising waves of the French Revolution were sensibly felt in Ireland. The English Ministry now decided upon making conciliatory concessions, first of all by an attempt to grant to the land an independent Parliament (1782). But it soon became evident that the *want of coherence* in the electoral bodies, and the animosity then obtaining between the nationalities, rendered impossible the establishment of a Parliament endowed with vitality. The union with Scotland had already become necessary in 1707, from the fact that the English and Scottish Parliaments had begun to issue conflicting decisions, which threatened to throw the Constitution and Administration into confusion. The same thing happened when the independent Parliament of Ireland began to pass discordant resolutions on the Regency, and in regard to other matters. But of still more decided import was the circumstance that the inde-

pendent Parliament offered to the Irish National party merely an instrument for effecting a severance from the hated Saxon Church and people. This increasing tendency to secession resulted, in the years 1794-1798, in open rebellion and French invasions, in which the native population behaved with a passion and ferocity recalling the Indian wars. Pitt perceived that there was no other expedient remaining but to effect the "Union" of the land with England on the footing of equal civil and political rights. For the apportionment of State burdens a simple measure was resorted to. The number of members, based on an average of population and on taxation, was fixed at one hundred ; and to the Upper House was added a more restricted number of twenty-eight members elected for life from among the Irish Peers. The accomplishment of the Union presents itself as one of the master-strokes of this great statesman.

But through the union with Ireland, the clerical basis of the parliamentary constitution entered into a new phase. Even in England a great part of the population no longer belonged to the Anglican Church, the Dissenters already numbering several millions at the beginning of the century. In Scotland, more than three parts of the population belonged to the Presbyterian Church, which rigidly excluded even the Anglican. In Ireland, more than three parts of the population, now possessing the like political rights, belonged to the Roman Catholic Church, side by side with which the Anglicans could no longer hold their ground as the only privileged class in Church and State. Hence the principle of one Church in one State was

no longer tenable as the basis of the parliamentary Constitution. In 1828 there ensued the formal abolition of the Test Act and Corporation Act, and therewith a thorough dissolution of the old bond of union between Church and State, which, for the Protestant dissenters, had already become dissolved. And now at last, after a protracted struggle of over fifty years, there followed, as an inevitable sequence, the "Emancipation Act," in behalf of Roman Catholics. The memory of the ominous policy of the Stuarts was still so vivid, that a perilous conspiracy, followed two years later by the dangerous Gordon Riots, had already been caused by the Saville Act of 1778, which merely repealed certain draconic statutes directed against the celebration of Mass, the education of children in Roman Catholic Schools, and the right of Roman Catholics to acquire landed property. The consequent uprising and hostile attitude of the Irish population had kept up this strong feeling to such a degree, that Pitt (in 1801) was debarred from adding an Emancipation clause to the Act of Union. This was the sole motive of the resignation of the great statesman, who was, however, again called to office by George III. in 1804, but even then only on condition of his leaving this question alone. In 1807, the Grenville Cabinet made shipwreck on the same question of emancipation. In 1813-1817 the Grattan Bills failed; in 1819 the renewed measures were rejected in the Lower House, and in 1821 and 1825 in the House of Lords. But the threatened rise of the Catholic Association, and the illegal election of O'Connell as member of the Lower House, as also the recently-passed abolition of the

Test and Corporation Acts, forced on the solution of the question in 1829. After George IV. had once more refused his consent to the proposed alteration of the Oath of Supremacy, he at last accepted the consequent resignation of ministers, whereupon the Act was passed by 320 votes to 142 in the Lower House, and by 213 to 109 votes in the House of Lords.

The breach in the fortified position of the ruling class was now effected, and room thereby made for the introduction of further reforms.

A somewhat changed spirit in legislation was already apparent in the first decade, through the introduction of various *social* reforms. As the matured and noble fruit of unflagging efforts protracted over twenty years, there appeared, in 1807, the prohibition by law of the Slave trade, which, at the cost of heavy sacrifices, was carried to its logical conclusion. Of great importance for the labouring classes was the repeal, in 1824, of the old criminal enactments against Trades Unions, and against some obstacles to free change of domicile. Factory Acts, for the protection of the working-classes, also began gradually to make their appearance.

Equally modest beginnings were made with reforms in the *administration*, tending to secure the abolition of a vast number of sinecures that had been created in behoof of the ruling classes ; the appointment of a commission of inquiry into the system of the antiquated Court of Chancery ; reforms in the Customs' tariff, on the ground of the excessive protection duties ; the abolition of the Trade monopoly of the East India Company, and amendments in the Navigation Act.

Farther reaching *political* reforms, on the other hand, had little prospect of success, so long as the composition of the Lower House continued so wonderfully interwoven with the various sections of the ruling classes in town and country. But the attempt to remove these anomalies touched the sensitive point of the dominant controllers of Society. The serious anomaly of the accumulation of boroughs was doubtless acknowledged, for they still enjoyed a representation ten times out of proportion to their population. The first ill-considered proposal of the Duke of Richmond (1780) to launch a uniformly-adjusted franchise in their stead, was, however, thrown out without even a division. Pitt's very moderate proposals (1782, 1783, 1785) to sweep away thirty-six rotten boroughs, and distribute the vacant seats among the counties and the metropolis, had been already thrown out by the Lower House, as the import of such an encroachment on the standing of the actual parties could not well be overlooked. The recently-formed "Society of the People" (1792) in vain offered to bring proofs, that at that very time 200 members of Parliament were chosen for small boroughs possessing less than 100 electors, and that, altogether, 357 members were practically nominated by 154 powerful patrons. According to a later calculation, 300 members were elected under the influence of Peers, 171 under that of powerful Commoners, 16 under control of the Crown, so that there remained only 171 freely-elected members. But the Lower House refused to make known the number of electors, and the scenes of horror now being enacted in France, as also Burke's fervid "Reflections on the French Revolution," filled

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the public mind with such horror of universal suffrage, that the subsequent motions of Grey (1793, 1797) were thrown out by overwhelming majorities even in the Lower House. The international struggle against Napoleon absorbed the interest of the population to such a degree, that even Brand's proposals (1810 and 1812) met with little sympathy. After the conclusion of peace in 1815, there followed years of famine and commercial crisis, of dangerous riots, and a brutal attempt on the life of the Prince Regent (1817), a "Cato Street Conspiracy" for the assassination of the Cabinet Ministers (1820), so that the "Radical Reformers," as they were now called, found a very unfavourable ground for their efforts. The Radical motions of Sir F. Burdett were thrown out by 106 votes against none. Not till 1821 and 1822 did Lord John Russell venture to reintroduce proposals, which, though still rejected by the Lower House, by 269 votes against 164, yet elicited comments from the press clearly pointing at a changed attitude of public opinion. A petition of 17,000 freeholders of the County of York (1823), made it at once apparent that it was no longer a question of mere artificial agitation, but that there had been a sensible change in the fundamental condition of Society, in consequence of which a powerful section of the propertied classes now supported the demand for reform.

In the course of the mighty struggle against France, some changes, at first apparently of little moment, had been brought about in the interior of the country, which nevertheless rendered the nineteenth century a perfectly new epoch even in English State life. The *invention*



*of machinery* began to draw sundry branches of rural labour into the towns. It found larger application at first in cotton, wool, flax, and silk, which again led to a rapidly increased consumption of coal, iron, and raw materials, concentrating trades and commerce to a degree hitherto unknown. It also began, since the Peace of 1815, to exercise its influence beneficially on agricultural pursuits, and, in reciprocal operation with the improved means of communication, to change the economic aspect of the whole country. From decade to decade the transformation of the manufacturing processes became more and more apparent in an accelerated rate of production, at first through the application of steam power, and soon afterwards by railway traffic. Landed property and movable property, manual and intellectual labour, entered into manifold new combinations, which in their gradual expansion shifted from land to capital the centre of power derived from wealth. Production, consumption, and exchange merged in a new and uniform system directed towards the markets of the world, and which, owing to her boundless trade and colonial possessions, found in England a stupendous development.

With this new shaping of the conditions of property and industry throughout the nation at large, there now also arose a new structure of Society in its relation to the State.

By the accumulation of capital in financial and industrial enterprise, there sprang up a large number of new families possessing an independent *movable* property, with incomes equal to the average of those enjoyed by the hitherto ruling classes. By the

acquisition of land, and through the civil offices of Justices of the Peace and Magistrates, these new families even entered in large numbers into the circle of the old gentry, without, however, taking an equal share in the customary functions of public life, and for that very reason without sharing in the firmly-established political influence of the ancient gentry.

The new combination of capital and labour, the fuller application of intellectual and technical knowledge, the course of business followed in conducting commercial and industrial pursuits, resulted in a corresponding expansion of the middle classes, who contributed their quota to the taxes in quite as full a proportion as the freeholders in counties and the freemen in towns, but who, by reason of the institutions then prevailing, were, for the most part, excluded from the franchise.

Lastly, the working classes were forced, through the employment of labour on a large scale, into dependence on industrial capital, generally without being allowed any individual share in the communal privileges of their respective districts, and without any electoral franchise.

The inclusion of these new factors in the communal bond (which even to the present day forms the main difficulty of German communal institutions), was carried out with great ease in England, as the English communal taxes, according to the elastic system of the Poor-rate, were charged from the outset on the actual "occupier." The communal taxes on house property and industrial investments, according to this system of taxation, have even long exceeded the communal burdens of the landed property. On the other hand,

the introduction of the new elements into the parliamentary right of election met with the same opposition as in the case of the national constitutions on the Continent. The franchise had been granted in the Middle Ages to the possessors of feudal and freehold property, who were then the bearers of the actual State burdens. But this fundamental principle had long been forgotten. From generation to generation these political rights had been transferred and acquired together with the property, and as such were maintained on their broader English basis as jealously as the political privileges of noble landowners on the Continent. This view was so firmly ingrained, that in his Reform proposals of 1782 Pitt wanted to buy up the franchises from the thirty-six rotten boroughs for the sum of £1,000,000, and he actually carried out such a system of "purchase," on occasion of the Union with Ireland. Hence the privileged freeholder, even in England, could by no means be easily persuaded into granting to the old copyholders, to the leaseholders for longer terms, and still less to the mere tenants-at-will, the same right of vote, even were the qualification of forty shillings to be raised from five to twentyfold in accordance with the altered value of money. But the town proprietors were more easily persuaded to admit their tenants' claim to equal rights, as the system of borough administration by select bodies was no longer feasible, and the occupier had long become the discharger of the chief communal taxes. Hence the boroughs were overwhelmingly in favour of reform. The conflict as to the reform of the franchise thus assumed from the outset the aspect of a struggle for the privilege or

equal right of certain *tenures*, and it has maintained this tendency to the present day.\*

In the meantime, the first epoch in the development of the industrial element in Society had passed away, and behind the reform movement there no longer stood an agitation of extreme champions of reform, but a well-grounded feeling of dissatisfaction or injustice in the new elements of the propertied and middle classes. The focus of the movement lay in the larger cities, which, in the electoral scheme of the parliamentary constitution, were either not represented at all, or altogether insufficiently. But even in the boroughs summoned to Parliament, the old-fashioned municipal constitution, limited to select burgesses, generally excluded the bulk of the population from any political right. In the country also the restricted electoral franchise of freeholders corresponded as little to their social position, as to the heavy burden of taxes now paid by the industrial middle classes. The representation of the northern and the southern counties of England appeared in flagrant disproportion to the actual population. In Scotland, the whole body of county electors was limited to the number of 2,500; in boroughs, to 1,440; and in the capital, Edinburgh, to 33 voters. The powerful influence of the Press, and the right of association, gave to these endeavours a

\* The position of classes now being re-fashioned through the relations of capital and industry in Society as newly constituted, can to some extent be understood from the census lists recurring every ten years, and from an examination of the Income-tax and of local taxation. From the latter especially may be inferred to what a rapid degree incomes are augmented from inhabited houses, and from factory and mining works, as compared with agricultural holdings.

strength, of which the ruling classes began now for the first time to be conscious.

This consciousness of the new social conditions was suddenly and unexpectedly quickened by the *July Revolution in France*, which gave to the middle classes, as they were called in England, a commanding influence over the State power, and which, by its constantly-recurring contagion, now made parliamentary reform unavoidable.\* The stern resistance of the High Tory party had given way with the enactments of 1828 and 1829. While in September 1830 Wellington was still solemnly declaring that the parliamentary constitution needed no reform, two months later Lord Grey took office with the promise of parliamentary reform as a ministerial measure. On the 1st March, 1831, Lord John Russell brought in his first proposal of a Reform Bill, which passed the first reading after a debate lasting seven nights, and after 71 members had spoken, but only passed the second reading by a majority of 302 against 301 votes. In consideration of the prevailing feeling of the population, William IV. was persuaded to dissolve Parliament, the new elections resulting in a very considerable majority in favour of Reform. On this occasion, at the second reading, the Bill passed by 367 against 231 votes in the Lower House ; and after much obstruction, at the third reading with 345 against

\* The contagious influence of the July Revolution, with its ideas of sovereignty of the people, betrayed itself, at the commencement of 1830, by a series of indications which were afterwards forgotten. Attention may, for instance, be called to the fact, that in the district meetings of the freemen of the City of London, formal resolutions were drawn up, according to which the Members of Parliament were henceforth to receive "binding instructions."

234 votes. On October 8th, 1831, there followed in the House of Lords the rejection of the Bill by 199 votes against 158, in consequence of which a widespread and hitherto unexampled flood of agitation swept over the land, leading to numerous violent outbreaks. Already, in December 1831 there followed a third Reform Bill, which was passed at the second reading by a majority of 162 votes, and now also (after a few personal changes) in the House of Lords by 184 votes against 175. Nevertheless, the passing of the Bill was again jeopardised by a dilatory amendment of Lord Lyndhurst. The feeling throughout the country seemed still more critical during this interval. Several Lords had been insulted by the mob, Nottingham Castle had been set on fire, and violent riots at Bristol had led to much loss of property. No verdicts could any longer be obtained from any jury against inflammatory pamphleteers. Lord Grey estimated the number of crimes committed in connection with the Reform Bill at about 9,000. Hence the ministers again demanded a batch of Peers, which, being refused by the King, the Ministry tendered its resignation. But after the Duke of Wellington had tried in vain to form a new Cabinet, the King intervened personally by requesting the dissenting Lords, by private letter, to withhold their votes, whereupon the Bill passed by 106 votes against 22, jointly with the corresponding measures for Scotland and Ireland. The new fundamental laws for the House of Commons were now constituted as follows:—

I. As regards electoral *districts*, the Reform Bill upheld the right idea, viz., to retain only as electoral districts the real *Communitates*—i.e., the counties and

municipal corporations, but with elimination or restriction of completely decayed boroughs, and by apportionment of the vacant seats to large communities which had hitherto been neglected. Consequently, 56 small boroughs, with populations under 2,000, foremost among which was the notorious "Old Sarum," lost their franchise altogether; while 30 smaller boroughs, with populations ranging from 2,000 to 4,000, were restricted to 1 member. On the other hand, 22 more important, but hitherto unrepresented towns (Manchester, Birmingham, Leeds, etc.), now received 2 members; 20 others, with populations ranging from 18,000 to 25,000, 1 member each. The 25 larger counties were separated into 2 divisions, each of which was henceforth to return 2 members; 7 counties received 3 instead of 2 members; 3 counties in Wales 2 members instead of 1. The unappropriated seats still sufficed to allow 53 members to Scotland instead of 45, and to Ireland 105 instead of 100.

II. In respect to electoral *rights*, the old franchise of the 40s. freeholders was maintained in counties, subject, however, in case of tenure for life, to the condition of actual possession, so as to prevent any increasing of votes by parcelling out freeholds (faggot votes). Without such preliminary condition, the freehold conferred right of vote only on a £10 yearly value; and now in like manner also the copyhold on £10 value, as well as the leasehold for sixty years or more, whilst leaseholds for twenty years and more conferred the franchise only on a £50 value. Further, through the Chandos Clause, introduced in the Upper House, the franchise was conceded to

every tenant-at-will and other occupier, when the rent amounted to £50 or upwards.

In boroughs, through the disintegration of the Corporation Charters, all previous principles had disappeared to such an extent that, according to Statute 2 Geo. II., c. 2, that right of vote should continue to be valid, which, according to the "last decision" of the Lower House, had been accepted as existing. The Reform Bill conferred the franchise comprehensively on the middle classes—*i.e.*, on every occupier (owner, lessee, or tenant) of a dwelling house, warehouse, counting house, or tenement, of £10 yearly value.

According to the old system, all electoral rights were based, not on payment of rates and personal duties towards the State, but on tenure. But for the maintenance of coherence in the electoral bodies, there was required an actual tax-payment, and a prolonged abode in the electoral communal district, or acquisition of freehold by inheritance, or through marriage settlement.

III. As regards electoral *proceedings*, after the example of France, the important innovation was introduced, that complete electoral lists were to be taken by the district authorities, with a fixed revisional proceeding on the part of Revising Barristers, with power of appeal to the Courts of the Realm. The entering of the voter's name on the electoral list was made a preliminary condition to the exercise of the franchise. Whereas formerly the protracted examination of electors' claims dragged out the election for weeks, the poll became now restricted to two days, and subsequently to one day, and thereby the occurrence of



electioneering riots, as hitherto prevailing, was at once considerably diminished. A severe Corrupt Practices Prevention Act, 1854, next sought still more thoroughly to prevent bribery at elections.\*

The number of those qualified to vote, which was computed at 400,000 at the time of the first Reform Bill, was about doubled by this Reform Act. After the thorough carrying out of the new electoral system (1832), there were reckoned at the county elections in England and Wales 322,619 freeholders, 23,097 copyholders, 21,104 leaseholders, 99,019 tenants-at-will. The number of the borough electors also was set down, on occasion of the proposal of the second Reform Bill, at only 488,920. Moderate as such extension seemed in comparison to the constitutions of the Continent, yet it sufficed, in the peculiar position of the English parliamentary constitution, to render the middle classes no longer the moderating, but rather the "determining" factor of the parliamentary constitution.

\* The technical details of the Reform Bill are here purposely omitted, and especially the not very important modifications of the Reform Bill for Scotland and Ireland. These details are treated in separate English works in very characteristic technical style, and are presented most exhaustively in Lely and Foulkes, "The Parliamentary Election Acts." London : Clowes & Sons, 1885.

## VIII.

### The Parliaments of the 19th Century down to the Second Reform Bill (1867).

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IN the ancient world, an aristocratic constitution, such as existed in England at the beginning of the nineteenth century, in all its exclusiveness, would have ended in reducing the lower classes to mere slavery. It is a splendid testimony to the power of Christianity and of this nationality, but especially to the ruling class in England, that from amidst such a condition of things English Society entered upon an era of social reform and of Reform Bills. Nor can the credit be refused to the old Whig party of having, consistently with their standpoint, carried through with courage, steadfastness, and discretion the great purpose of ensuring the reform of the representation of the people, without any rending asunder of the bodies empowered to vote for the House of Commons.

January 1833 witnessed the first meeting of the reformed Parliament, in which only 172 Conservatives stood confronting 486 Liberals and their adherents. Already, in the first Session, a long array of Reform

measures pressed to the front, which, resulting from a long-stemmed flood of public opinion, were soon destined to present great difficulties for the actual majority and ministries. The pending movement for fresh reforms henceforth branched off into the threefold direction of Social, Administrative, and Political Reform.

I. The *Social line* of attack was first directed against the political privileges of the ancient ruling class. With great moderation this branch of the movement was satisfied with the abolition of the electoral qualification of £600 and £300 ground rent for members of counties and boroughs. This qualification had been introduced a century previous with a view to hampering the competition of capitalists as candidates against the landed gentry. It was now simply abolished (1858). Proposals for divesting Bishops of their political functions in the Upper House, and for the creation of a number of life Peers side by side with the hereditary Peers, have for the time been rejected.

More decisive were the blows aimed at the economic privileges of the ancient ruling class ; first of all against the great trade monopolies which, in consideration of a slight compensation, were brought to an end ; next against the widely prevailing system of protective duties which, being acknowledged as generally detrimental to a State engaged in Commerce and Industry on a large scale, were abolished wholesale, a few productive imports being alone retained. After fierce opposition the Corn Laws were also repealed. Although Lord Melbourne had declared (1839) that "he regarded as adventurous and mad" the scheme of leaving the great agricultural interests unprotected, yet the "Anti-

Corn Law League " and the power exerted by the Press in the years 1838-1846, availed to carry this measure also, under the lead of Sir Robert Peel. The powerful land-owning interest had also to submit to the commutation of tithes, to the modifying of the burdens weighing on the copyholder, and to a system of enclosures of land, although certainly with many saving clauses.

The principle of equality of rights in ecclesiastical matters involved the repeal of certain obsolete penal laws, and some measures of relief given to dissenting communities, necessary for the administration of their property and for the cure of souls. The admission of Jewish members to the Lower House was for a long time barred by the opposition of the Upper House, but was ultimately (1858) effected by a shabby and, in its consequences, somewhat dubious expedient, which left to each House the right to determine for itself the form of oath to be taken by its members.\*

As formerly, at the turning-point of Magna Charta, so now, in the nineteenth century, the propertied classes have not forgotten that solicitude for the weaker classes still remains a vital condition for every free community. The noble mission of abolishing the Slave Trade was now extended to the still more difficult task of procuring the abolition of slavery itself, which was effected with as much judgment as success, at a sacrifice of £20,000,000 of the public money. Far more difficult and intricate were the problems connected with the

\* An Act of Parliament for the admission of Jews to equal rights as citizens had already been introduced in 1763, but in consequence of a violent manifestation of adverse public opinion had to be withdrawn in the following year.

measures of social reform in favour of the industrial classes. However beneficial for the outward independence and earnings of these classes may have been the development of steam power and of the factory system in the first decades of this century, equally unfavourable became the relations of capital to labour in their subsequent progressive evolution. Within one generation there was unfolded in the new proletariat a picture of debased family life in its dwellings, food, clothing, sanitary arrangements, moral and physical degradation of women and children, such as for several decades revealed the very darkest sides of the new social conditions. Owing to the prevalent economic distress, the very years following the Reform Bill were calculated to awaken in these classes an overwhelming sense of their misery, and of momentous common interests radically opposed to those of capital. From the year 1839 this sentiment assumed in the Chartist movement a threatening aspect, which, however, ultimately spent itself in the abortive monster demonstration of 1848. Without allowing itself to be disconcerted by the menacing attitude of the working classes, the Legislature now proceeded with unflagging zeal to attempt a practical solution of these social problems. Such were the removal of the evils most injurious to family life, as, for instance, restriction of the labour of women and children, limitation of the working hours, removal of direct risks to life and health in mills and mines, and the appointment of factory inspectors, on whose reports further protective measures were introduced and extended from decade to decade. Further provisions were made to prevent a revival of bondage

by vigorously repressing the truck and cottage system, to ensure the legal protection of the weaker classes by ready access to civil justice, and an effective procedure in cases of arbitration and agreement ; to guarantee the liberty of association, even for the purpose of enforcing higher wages, accompanied, however, by penalties against any abuse of this privilege, such as had from time to time occurred in the most flagrant way. Directly and permanently beneficial proved the reduction in price of all the requirements of life in consequence of the removal of protection duties on corn, meat, and subsequently on tea, coffee, etc., whereby the domestic outlay of the poorer classes was on an average diminished by about one-third, while the liberty of association and the relations of the international market brought about a slow, but, on the whole, continuous advance in wages. The far-reaching and very valuable reforms in respect of sanitary and structural measures by means of a long series of Public Health Acts resulted mainly to the advantage of the working classes. In behalf of elementary education, which had been so grievously neglected, a parliamentary grant of £20,000 was first guaranteed in 1833, which in the course of some decades was increased more than a hundredfold, and has expanded into an ever-progressing system of popular education. Embracing every aspect of economic and family life, this social legislation has been able to afford scope at the same time to independent self-help by means of a well-ordered regulation of the system of association through savings banks, burial societies, sick funds, friendly societies, and co-operative companies for production

and consumption, occasionally even under State security and State aid. Connected with, and supplementary to, all this was a progressively milder treatment of the poor, which at least superseded the harsh and exclusive system of the preceding generation. Doubtless from its very nature this remains an endless function of the public administration, and in the special relations of the greatest industrial and commercial centre in the world it may possibly never adequately meet all the requirements of the weaker classes. But looking back on what has been done and achieved in the course of a generation, it must be acknowledged that, with a worthy sense of its duties, the Legislature has remained faithful to the mission incumbent on the opulent classes of a free State.

II. The domain of *administrative reforms* was at first directed against the abuses, which, under the assured predominance of a governing class, must at all times arise in the patronage and administration of public offices. But however useful as a protection against the abuses of a party *régime*, the excessive legal determination of all powers of administrative agents imparted on the other hand a cumbrous and rigid character to the whole system, which greatly obstructed the execution of all these reforms. Here also the generation following the Reform Bill displayed a wise energy, contrasting advantageously with the contemporaneous condition of affairs in most Continental States.

In the sphere of *military* administration, the experiences of the Crimean War led to a grouping together of the entire system under a Secretary for

War. In lieu of a universal obligation to serve in the army, which could not be enforced in England, there sprang up a comprehensive system of volunteer corps, which contains the germs of further development.

Very energetic reforms were also introduced into the domain of *Justice* through the new County-courts, which for the first time ensured to the public easy recourse to civil justice. There were further effected very urgent reforms of civil procedure and procedure in Chancery, through the newly-organized Courts of Bankruptcy, Probate, and Divorce. Criminal procedure acquired a practical organization for the Metropolis through the Central Criminal Court, as well as by an excellent system of criminal examination, and the codification and extension of summary criminal procedure. Very thorough were the reforms introduced into the excessively cruel Criminal Law. Whereas, in the time of the Restoration down to the accession of George IV., no less than 187 offences against law had been punishable with death, capital punishment is now practically limited to high treason and murder, while the punishment of the pillory and forfeiture are abolished, and transportation replaced by a rational system of imprisonment.

In the *financial* department, after the protection system had yielded to the paramount consideration of taxation for purposes of revenue, a consolidation of the Customs, Inland Revenue, and Stamp Acts was rendered possible by the repeal of many hundred parliamentary statutes. Sir Robert Peel's Income-tax has, with certain amendments, taken a good lease of life. The broken-down system of the Royal Post has



been transformed into the Penny Post. For the control of the Finances, so grievously neglected by party governments, the Treasury has established, by arrangement with the Bank of England and an Accountancy Committee of Parliament, effective means of control, as well as for the management of the National Debt by means of a special Committee.

In the *Home Department* in the domain of *Police*, the parish constables having become insufficient, they were replaced in the Metropolis and throughout the country by paid bodies of police, organized on a military footing, in practical accordance with the police regulations and police jurisdiction pertaining to the Justice of the Peace. Several branches of the legislation on the industries were consolidated afresh, those more especially affecting public-houses, for which, after many experiments, a return was made to the practice of requiring a magistrate's licence. With due regard to agricultural and game interests, a Game Act was introduced (1834), which swept away numerous grounds of social discontent. In respect to the regulation of traffic, the codified "Merchant Shipping Act" is of great importance, as well as private bill legislation bearing on the still somewhat defective Government supervision of railways.

A greatly modernized sphere of administration for the Home Department has been developed out of the economic "self-government" of the *Communes*. The first instalment was the great Poor-Law Bill (1834) and its innumerable amendments, in the carrying out of which the Central Poor Law Board, with its hosts of inspectors and auditors, affords an example of

centralisation on a scale heretofore unknown. Through the combination of the greater District Boards and the establishment of Workhouses, the gross abuses of former Administrations have been surmounted with great energy, but at the same time with much harshness. Next came the regulation of Highways (1835), which, in the constituting of larger boards, follows the pattern of the Poor Law. After numerous doubtful experiments, the Public Health Act (1848 *et seq.*) introduced some order into the inspection of sanitary and structural arrangements in densely peopled localities, which were placed under the searching survey of a Central Board. For Municipal Boroughs a new Municipal Corporation Act (1835) was issued, which, setting aside the ancient effete structure, established a uniform administration through Mayor, Aldermen, and Town Councillors, while retaining the police-organization through special Peace Commissions appointed by the Crown. After the lapse of a generation, this new communal administration has been moulded into a uniform system (1871) under a newly-created Local Government Board.

In the sphere of *ecclesiastical government*, the State authority had to deal with problems analogous to those of the self-government system, so far as through older legal relations, and the corporate organization of the Church, heavy abuses had crept in, which this corporate body was unable to suppress. In a judicious and benevolent spirit the administration of the revenues of the State Church was now re-organized by means of mixed committees, the ecclesiastical districts and functionaries being increased according as required,

and thousands of churches and parishes founded by Government and private means, and richly endowed to meet the requirements of teaching, and the cure of souls. With equal judgment and evasion of dogmatic points, the questions connected with the Ritual, Church discipline, and the framing of the Oath of Office, were settled according to the advice of clerical committees, and a fresh and fruitful activity thereby imparted to the National Church in respect of doctrine and the cure of souls, in striking contrast with the state of affairs by which centuries before the Anglican Church had been disfigured.

In respect to *educational* matters, the Reform Bill still remained satisfied with exercising a gentle pressure on the Universities and school foundations, to ensure the framing of new statutes. More marked was the progress in elementary education, for which comprehensive measures were introduced under the control of a new Ministerial Department (1856), with a separate branch for the encouragement of schools of Art and Industry, by means of considerable grants from Government.

In respect of the administration of the *Colonies*, the mother country decided, after hard experiences, to grant to the Colonies independent constitutions suitable to their position, population, and state of culture, reserving a supreme legislative control to the English Parliament. Since the suppression of the great mutiny of the native army, the administration of the East Indian Empire was, by the new organic law of 1858, placed under direct State control, with suitable regulations for the Government Councils, the Courts of

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Law, and the general administration and appointments to the Indian Civil Service, based on the fundamental principle of public competitive examinations.

Over a hundred far-reaching administrative laws, and an organic regulation of the whole Civil Service, gave proof also in this department of the efficacy of parliamentary rule.\*

III. In the sphere of *political reforms* alone, that is, in the organization of the communal bodies, and the further development of the parliamentary constitution, abortive attempts at creating a new order of things first became apparent. In respect of administrative reforms, the business capacity of its ruling classes, and for social reforms, the practical sense of its men of business, had proved of avail to the country. But on the other hand, for the now ensuing group of enactments, the English Parliaments were almost as deficient in practical experience as the national assemblies on the Continent. The organic laws, whence the parliamentary constitution had developed, had resulted from the initiative of the Monarchy when at its height under Henry II., Edward I., Edward III., Henry VIII., and Elizabeth. The Parliaments of the eighteenth century had merely drawn their inferences from the institutions then existing. New projects of this kind emanated just as little from the party struggles of the eighteenth as from the Civil wars of the seventeenth century, so

\* English administrative law, which pertains as essentially to the being of the English State as does parliamentary right, was practically unknown on the Continent at the time when constitutional theories in France and Germany were settled. From the systematic treatment of the subject in Gneist, "Engl. Administrative Law," 3rd ed., 1883-84, vol. ii., only general excerpts can here be given.

much so that the Commonwealth in particular bequeathed not a single organic law to posterity.

Such new laws had now become necessary, since by reason of the transition to a new order of Society, the old links of coherence had been loosened, and had to be replaced by fresh ones, as happened in Prussia, for instance, by a conjuncture of strong impulses and favourable conditions, in the years 1808 to 1815, and 1872 to 1876, although here not by means of "public opinion," but through the initiative of the Monarchy. But the English Parliament has been as little able to fulfil this task as the constitutive assemblies of the Continent, because such laws in no way result from any contention of the social classes on their respective share in the rights and liberties of the community and of the State.

The main foundation of the English parliamentary constitution, the *unity of the National Church* in the State, had been lost through the repeal of the Test and Corporation Act. The religious equality now acknowledged was doubtless at first meant only as a position of equality for the *individual* members of the various dissident forms of belief. But as soon as those Non-conformists formed organized Church systems of their own, they were no longer content with the position of equality as concerns the individual merely ; but this was in all cases followed by a demand for equal rights for their "churches." These pretensions were urged to the extreme, especially by the Roman Catholics, who claimed their own Church rule as part of the doctrines of their faith. The Roman Curia accordingly took steps to establish a formal organization of ecclesiastical

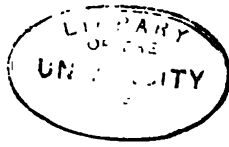
dignities and dioceses (a hierarchy) in England and Wales (1850). Thus was created a new situation calling for organic legislation on the limits of right, by which it might be possible for several rival Churches to exist side by side under the same uniform government, as in Germany. But the Ecclesiastical Titles Act of 1851, which attempted by penalties to interdict the proclaiming of the Roman Catholic Hierarchy, and the assumption of episcopal titles, proved a complete failure, and had soon to be repealed (1858). By way of reaction, the demand was, on the other hand, now raised for the "disestablishment" of the Anglican Church in Ireland, and the further "separation" of Church and State, in face of which the gratifying revival of religious feeling only rendered the position of the State all the more difficult. The Anglican Church, in spite of the firm hold it seemed to have taken in the nation, had been unable to prevent very numerous secessions in two opposite directions towards ritualistic and dissenting or rational views. In consequence of the dispute relating to Church patronage, the Presbyterian Church of Scotland had split up into two nearly equal sections (1842). The ecclesiastical relations in Ireland also continued to be severely strained, and here further entangled by racial antipathies. In all three parts of the Realm a powerful Church organization, firmly rooted in the religious sentiment of the people, claimed respectively an exclusive right. Were this exclusive right once established so as to control the whole domestic life, the moral and intellectual development of the populations in the sense intended, and to the extent claimed by the several Churches, then

this separation would necessarily also destroy all political unity. Great Britain—after having attained to a higher degree of culture—had now arrived at the level reached by Germany at the Peace of Westphalia. She found herself now severed into a Catholic and into two rival Protestant sections, the further development of which could not fail to bring about a rupture of the imperial unity, as would have happened in Germany but for the ever-watchful energy of the territorial administration and legislation, and as has happened in this nineteenth century, when analogous relations led to the separation of Belgium from Holland. Church systems enjoying equal rights, one of which, with its claims to infallibility, tolerates nothing else by its side, the other, with its pretension to exclusiveness, is wont to recognize no civil equality by its side, can make no progress in separate autonomy without severing the unity of State and people. Instead of realizing what common State institutions and legal restrictions such a state of things calls for, English Society evaded a solution of the problem by the vague notion of a "separation between Church and State," as if a separation of the spiritual and political man were possible, and as if the Roman and Anglican Churches could ever surrender their respective coherence and their antagonistic tendency, even were the State (as in the Prussian Code) to bestow on them the modest style and title of "religious societies." The inevitable task of future legislation for the upholding of the State and nation has, however, in its inception at least, been indicated by the introduction of a general registration of births, deaths and marriages (1836), a civil marriage at option, a

general Divorce Court, undenominational elementary schools, high schools, universities in common, common burial grounds, and so forth. Meanwhile, however, the negative result alone remains, that the equality of right and the intimate union of each contending Church breaks up the uniform basis of the parliamentary constitution, and introduces denominational sections into Parliament, side by side with the political parties.

The next determining foundation of parliamentary constitution, the inner coherence of the *Communitates*, was certainly maintained, as far as possible, by the Reform Bill of 1832; but the progress of social and administrative reforms led only too soon to a transformation of the groundwork, which had been by no means intended. Doubtless the new municipal organizations (1835) again assigned a share in the economic administration to the whole body of burgesses; but this civil administration, by its lasting severance from the police jurisdiction of Justices of the Peace, from the parochial care of the poor, and other important branches, had retained so limited a field of action, that it could do but little towards awakening and fostering a communal spirit. To all this was added the contradiction that in the municipal organization (against the urgent protest of Sir Robert Peel) a general uniform franchise for all householders was introduced, whereas the Reform Bill in favour of parliamentary franchise had summoned only £10 householders. There thus resulted a tendency to widen the parliamentary franchise, and a new antithesis to the County organization. In the shires was doubtless maintained the organization of the gentry in the General and Special Sessions of





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the Justices of the Peace, but with waning influence downwards. The suspension of the militia organization, which had become normal since 1829, had already impaired that influence to no slight degree. It was affected to a far greater extent by the reforms in the Poor, Highway, and Sanitary administration, whereby Justices of the Peace were restricted to a purely administrative jurisdiction, and to special duties of revision. The further development of these already dislocated communities now depended on the development of the local organization in the *Parishes*.

Through the offices of Constable, Churchwarden, Overseers of the Poor, and Inspectors of Highways, and through the vigorous development of the communal taxation system, this lowest substratum of the parliamentary constitution had become such a decided foundation of the *Communitates*, that the true nucleus of resistance on the part of the *Communitates*, in the great constitutional struggles, was to be found in the "cellular system" of the English parishes in its intimate association with the office of the Justice of the Peace. But partly through the fault of the ruling classes themselves, the local communal offices had already, in the course of the eighteenth century, lost much of their original importance. The ancient office of "Constable" had sunk to that of a despised police functionary, and was discharged on behalf of the more independent residents by deputy. The restricted areas of the several Poor Law and Highway Districts, which, in the interest of the great landowners, had been more and more reduced, degraded these branches also to a purely mechanical duty, which was little sought and little

esteemed. Even the far-famed English jury suffered from the growing abuse, which, by special provisions and an unfair practice of the Sheriff's office, enabled all the better classes to escape this service. While the offices thus sank lower and lower, the measure of the communal taxes increased year by year, and this again in reciprocal operation with maladministration of the respective offices. Hence the demand for a radical reform had from the outset specially in view an economic outlay of the rates. From the very first the reform aimed at an efficient control of this often recklessly lavish expenditure through a Board of trustworthy persons. What the tax-payers claimed was participation in the resolutions as to the appropriation of the taxes, and the appointment of the officials empowered to levy and expend (influence and patronage)—nothing more. The improvement in the care of the poor, inspection of highways, and sanitary arrangements—the whole range of social reforms doubtless needed not only taxes, but a wider *individual* activity for the multifarious duties connected with the welfare of the parish. But amid the whirl of English party strife there was henceforth no longer any thought for these increased personal duties, which, at least in German communal legislation, have not yet been forgotten. The result of this degradation of the lower parochial offices was that in England the importance of honourable personal functions in this sphere was entirely underrated. But above all, it was in the nature of a legislation, originating from a parliamentary struggle, that conflicts were always raised about new rights, never about new duties, for which there would have

been no possibility to ensure a majority in the actual Parliamentary elections. In constant deference to "public opinion," the legislation henceforth dropped out of view all personal duty in the case of the new boards and parochial offices, even expressly releasing the parochial representation from all personal "responsibility."\* In lieu of responsible functionaries for a legal communal administration, according to the principles of self-government, there were created local committees of tax-payers, to which Stuart Mill's striking expression "Local Parliaments" began to be now also gradually applied.

But the perilous step of *setting aside all personal duty and responsibility* in the communal body, has destroyed the whole structure, and this change, little noticed at first, involves more far-reaching consequences for England, than would the abolition of the general duty to serve in the army, for Germany. Here becomes evident the *organic defect* of the actual English State

\* An apparent exception is met with in the Municipal Corporation Act of 1835, which, conformably with the tradition relating to municipal corporations, expresses an obligation to undertake the civic offices. But such a precept remains mere paper, if such general duty incumbent on the citizen becomes extended to every household. Nine-tenths of the small householders could never undertake any civic office or even serve as jurymen, are never required to do so, and still less forced. The self-imposed deception of democrats in this particular can be established statistically if, as in Prussia, by means of the three-class system of tax-payers, the actual services rendered by the small householders are brought into evidence. The author upon one occasion (1860) demonstrated from the municipal statistics of Berlin, and also from other towns, that the share taken by the third-class tax-payers in the municipal administration, falls considerably short of what they contribute in taxes, and that this class, through the claiming of universal suffrage in the *Commune*, pretend to from ten to twenty times more than their contributions justify.

body, which provokes constantly fresh symptoms of acute social disease. Through the abolition of the personal duties of the citizen, the communal body is, in fact, virtually transformed into a system of shareholders, to whom the name of self-government is still, though wrongly, applied. But the administration of the communal life, owing to its peculiar nature, can no more be founded on a system of voluntaryism than can the defence of a country on volunteer corps alone. The administration of these integral sections of the body politic can be carried out only in conformity with the laws of the land, while the communal revenues raised by forced taxes can be expended only on lawful purposes. But as the new boards declined all responsibility, the law was obliged to constitute the subordinate paid officials (clerks, book-keepers, accountants, assistant-overseers, poor-house officials), intermediate State officials, responsible for the administration, and had, consequently, to render them subject to dismissal, and to official discipline, under control of a central board. In order to keep this law of supervision effective, all details of this administration had to be kept under strict control through Government inspectors and auditors. Thus originated the present system of home administration by "boards," which, in its centralization and tutelary administration, is essentially like the French system. But, together with the responsibility, the official influence also has mainly reverted to paid officials, leaving only such subordinate functions for the remaining communal boards and honorary officials, that the inclination of the higher classes to take part therein disappears more and more. Still less are the Justices of the Peace

inclined to take part in the conduct of such business, even when constituted *ex-officio* members. The unavoidable consequence of this system was that the degraded office of Constables made over all police functions to salaried policemen, and was eventually quite given up by the Legislature, and further that the offices of overseers of the poor and surveyors of highways came to be discharged by subordinate paid officials. The result of these reforms is outwardly visible in a police body, in uniform, comprising some 35,000 men, and nearly as large a *personnel* of bureaucratic and subaltern officials as successors of the officials of the self-government system, constituting a virtual withdrawal of the well-to-do and educated classes from local communal life, while the administration itself is kept together by a constantly spreading system of ministerial commissaries and ministerial orders. The extinction of all sentiment for local communal life ("parochial mind") is a complaint uttered in constantly louder tones, while no one reflects how in its fierce rivalry party legislation has effected this dissolution of the *moral* and *legal* union of the Communes, and that those merely interested in the local burdens are placed in as isolated a position towards each other as are the shareholders of a private company. Therewith also vanishes the personal communal feeling in the local community, hence the further demand for *secret* voting (the ballot), by which those qualified to vote are perfectly isolated and decline all moral responsibility, just as the local representative holds himself excused from all legal responsibility. The bureaucracy also has met this public opinion by the

invention of "nomination papers" (printed papers with the names of candidates proposed by ten electors), by which device electors are spared all trouble of meeting, thinking, consulting, and counting up, the election consisting merely in a few strokes, which the elector appends to the election list. This is the last shred of self-government, the only troublesome duty with which this present industrial society fancies it exercises and upholds the "sovereignty of the people."

Thus more and more disintegrated from year to year become the *Communitates*, on whose personal coherence the parliamentary body depended both in its origin and at every stage of its progressive development.\* But with the inevitable reaction the changed views of the reconstituted electoral bodies are reflected in the House of Commons, in the attitude of the party leaders, in the Press, and in "public opinion."

The influence of tradition has so far preserved a certain steadfast character as regards the votes in the greater part of the counties, as well as in a considerable number of the parliamentary boroughs ; but, as might be expected, to the least extent in the rapidly increasing populations of the great manufacturing centres. But in the same degree in which the process of disintegration advances, purely socialistic views of life are entertained, views whose complexion depends on the impression left by the last popular orator, and whose aspirations are limited to the nearest interests. To the holders of such views the Lower House has long ceased to present

\* The full bearing and character of this new organization of the municipal administration is described by Gneist in his "English Self-Government," 3rd ed., 1871, Caps. ix.-xii.

itself as a representative of the communal unions,—an organic connecting link between State, Church, and Society,—but merely as representing the temporary interests of the inhabitants of certain districts, or classes. While in England more than elsewhere the institutions of the parish and the county, of the Parliament and the Church, have for centuries been striving to effect a counteraction and counter-organization to socialistic interests, seeking to urge and accustom the citizen to understand and fulfil his personal duties in the life of the community, even against the natural bias of his self-interest, society itself, after the extinction of the “parochial mind,” has come to regard the feeling of patriotism, self-government, and sense of justice, as the mere outcome of voluntarism. In endless variety are now unfolded the socialistic theories on the improvement of the representation of the people by new groupings and classifications. Female franchise has already gained a respectable minority in the Lower House, and the system of elections by minorities has attained an effective support in the Upper House. Many a ministerial proposal, even in relation to the second Reform Bill, savoured of mere *dilettante* experiments. Every inkling of a notion as to some new grouping of interests is hailed as an important discovery, till it is forgotten at the next whim of the moment. In this only is Society still at one, that the individual shall exercise his particular share of the sovereignty of the people on his own special account, and without any responsibility, whence secret voting by *ballot*. The more perceptibly had been felt the gentle pressure exercised at the zenith of its power by the parliamentary constitution in repressing

socialistic tendencies, the more freely the English voter fancied he could breathe under the shelter of the ballot.

As soon as the communal unions had ceased to form the bond of common interest, *the Press and the right of association* alone remained as the mutual tie.\* As the latter can only prove effective transiently and locally, the Press, which has now achieved its full freedom, remains the principal motor. After the censorship had been abolished (1695), a still very effective safeguard remained in the draconic sentences of the Courts of law, based on the old penal law against sedition, conspiracy, and libel. By the Fox Act (1792) this safeguard was considerably impaired, for the jury had now to give their verdict as to the criminal intent of the author. Since the Reform Bill of 1832, a criminal prosecution of the Press by the Crown prosecutor was already considered unadvisable and impracticable. Practically Lord Campbell's Act (1842) merely legalized an existing practice, by accepting as sufficient justification the plea that the writer's intention was to further the public welfare. A statute of 1841 withdraws from judicial control all publications issued under authority of Parliament. The year 1853 abolished the tax on advertisements; the year 1855 the last remnant of the stamp duty. The strife for the Reform Bill, and the

\* It would be a delusion were we to cherish the belief that this disintegration of the groundwork is improved if the land-owning interest, professional bodies, religious societies, etc., are bound together as "Corporations." The want of a common bond of social union becomes thereby only all the more perceptible, and all the more does the Press alone and the political right of association remain the only bond through which, under such circumstances, a representation of the nation may be connected with the government.



powerful struggle on the part of all interested in the abolition of the Corn Laws, had already proved the hitherto unknown but now irresistible power of the daily Press. Free indeed it now was ; the indispensable organ necessary in all directions for the upholding of social interests, in able, and, upon the whole, honourable activity ; but still *irresponsible*, less so even than the new boards, open to every error, hence insufficient to impart to social aspirations that moral and legal support which the State requires.\*

These new unstable foundations of the electoral bodies explain clearly enough the altered *position of parties* in this generation. After the abolition of the Test and Corporation Acts, the time was gone for the practical activity of High Tories and High Churchmen. The moderate Tories, who took part in the State government, now styled themselves "Conservatives." For the Whigs, the designation "Liberals" gradually came into use, in conjunction, however, with an extreme party of Radicals, and many other mostly embarrassing associates. The great Liberal majority (486) of the first Reform Parliament soon suffered a disruption, caused by its internal disunion. The later parliamentary elections resulted in (1835) 380 Liberals against 273 Conservatives ; (1842) 286 Liberals against 367 Conservatives ; (1847) 325 Liberals against 331 Conservatives, the latter, however, split up into 216 Protectionists and 105 Free-traders ; (1852) 315

\* The developed significance of the Press, which first made itself felt a hundred years ago, through the celebrated and notorious letters of Junius, 1796, can only here be summarily indicated.

Liberals against 299 Conservatives; (1859) 348  
 Liberals against 315 Conservatives; (1866) 361  
 Liberals against 294 Conservatives. The distinction of Liberal and Conservative was, however, purely conventional. In point of fact, six parties, for instance, were already represented in the Parliament of 1837 : 100 Ultra-Tories, 139 Tories, 80 Conservatives, 152 Whigs, 100 Liberals, 80 Radicals. It is easily conceivable how, by an increased crumbling-off of small sections, it became more and more difficult to form a united Ministerial Cabinet to act in concert with the majority of the Lower House. And the difficulties of the situation coincided with the constantly increasing entanglements connected with the administration of such a world-wide empire. Scarcely a year passed, in this interval of thirty-five years, which was free from bad harvests and severe famine, from crises in trade and industry, from disorders in Ireland, from riots of Chartists and workmen, revolts in the Colonies, a general mutiny of the strong native army of India, great foreign wars,—all complicated by conflicts about protective duties and free-trade, and in connection with great social and ecclesiastical interests at home. The necessary consequence was the rapid change of the Grey, Melbourne, Peel, Russell, Derby, Aberdeen, and Palmerston Ministries—a change thirteen times repeated in the course of thirty-five years.

But the weakest point was, and remained, the organic structure of the communal system, and new reforms in the *parliamentary representation*.

Half a generation after the Reform Bill had been passed, public opinion was, however, still too much

occupied with other questions to revert at once to the widening of the franchise. Meantime the manifold claims of the people to a reformed representation accumulated so rapidly, that the House (since 1839) was obliged to cease dealing with the petitions, and rest satisfied with printing the more important ones. But the almost general right of election, which the municipal organization of 1835, and the new communal boards had maintained, pressed forward from the communal union into the parliamentary constitution. As at one time with the sound foundations of the self-government, now also the faulty foundations of the boards determined the character of the body returned by them. And once more came the February Revolution in Paris (1848) with its contagious influence in England, so that already in the year 1851 the proposals of Locke King were favourably received, inducing the Russell Ministry to introduce a new Reform Bill on behalf of the Government. In spite of his former assurance that the Reform of 1832 was to be "a finalty," Lord John Russell had now already arrived at the opinion, that the lowering of the qualification from £10 to £5 would even have a "conservative" effect. But a fundamental *principle* of electoral reform was no longer to be found, since the obligation to personal service throughout the whole range of communal institutions had been abandoned. The duty to pay rates had also in the meantime been relinquished, when, for the convenience of levying the small amounts of rates, the ground landlord, instead of the occupier, was allowed to be assessed ("compounding rates"), and very soon this measure was largely

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availed of, in fact, in more than half of the cases that occurred. By a legal fiction, the occupier was still to exercise his franchise "just as if he had paid the rates himself." If payment of the taxes, as the foundation of the right of voting, was thus set aside, a £5 qualification became just as defensible, or the reverse, as one of £10 might be. But every discussion on the point led to decisions, carried by the majority at numerous meetings, in favour of lowering the qualification. A like conclusion resulted from the discussion of the matter by the organs of public opinion. There now began and continued, through half a generation, a rivalry between Liberal and Conservative party ministries in connection with Reform schemes, each trying to outbid the other for the popular favour. At the last turn of the table (1866) Gladstone offered in favour of occupiers a lowering to £14 in counties, and to £7 in towns, but was outbid by Disraeli, who now (with certain amendments on the part of Gladstone) came down to £12 for counties, with a general equalization of household franchise for boroughs. In a Parliament wearied with electoral discussions, the third reading of the Reform Bill of 1867 passed in the Lower House, even without a division, with the following results :—

I. In reference to *electoral districts*, the Second Reform Bill also proceeded cautiously. It did not withdraw the right of vote altogether from any electoral districts ; but 38 boroughs under 10,000 inhabitants were limited to one member. Liverpool, Manchester, Birmingham, and Leeds obtained a second member, and ten new boroughs were created. In electoral districts returning three members only two votes were to be

given in order that the experiment of the minority vote might be practically tested.\*

II. As regards the right of voting, the 40s. freeholders in counties retained their right, but the freeholder for life only in case of his being in actual possession; the £5 freeholders received it also without any such condition. In like manner the £5 copyholders and leaseholders and all other tenants, as £12 occupiers. In the towns every householder (owner or occupier) of an inhabited house, or of an independent dwelling; also sub-tenants when the unfurnished apartments represented a £10 value.†

III. The *mode* of election remained for the time being unchanged, although the introduction of secret

\* Elections by minorities, after the Reform Bill of 1867, were quietly set aside in the third Reform Bill, as mere experiments that had failed. The endeavour to exact that actual payment of taxes shall have been made as a precedent condition to the right of exercising the franchise will be treated of in the following section. Respecting the modifications in the Reform Bill for Scotland and Ireland, as well as the technical details, I would refer to the special treatises, particularly to Lely and Foulkes, "Parliamentary Elections Acts, 1885."

† The most important differences between the first and second Reform Bill in regard to the right of voting are the following:—

(1) In parliamentary boroughs the first Reform Bill conferred the vote on every occupier, whether landlord or leaseholder, of houses, shops, warehouses, or other buildings of an annual value of £10. It was subsequently computed that, according to this proportion, about one-fourth of the voters in towns belonged to the class of journeymen, certainly very unequally distributed and concentrated in greater masses in the chief cities and in manufacturing districts. The second Reform Bill dropped the £10 qualification, and thus included the working population in the mass so far as they possessed a dwelling of their own. But the principle that each household ought to be represented did not well suit the position of the sub-tenants, whom it was not, however, the intention entirely to exclude. There was consequently, in their regard, a conditional right of vote adjoined,

voting was already in prospect. Simultaneously the Lower House relinquished the decision as to contested elections, leaving it to the Judges of the Realm.

The anticipated result on the passing of the Bill was an increase of about 2,000,000, and from the results of the twofold increase at the first Reform Bill the effect of the threefold increase under the second was to some extent foreseen.

provided they have been for some time sub-tenants of a dwelling-place which, as unfurnished rooms, would represent a value of £10, as also under condition that the occupiers be personally inscribed on the voters' list.

(2) In the counties the second as well as the first Reform Bill retained the right of vote for the 40s. freeholder unchanged. On the other hand, the qualification of freeholders for life, copyholders and leaseholders for sixty years, was lowered from £10 to £5. For the qualification of £50 for tenants at twenty years and upwards, and according to the Chandos clause for tenants of every kind paying £50 rent, there was substituted a right of vote for every occupier of a rural holding of £12 value.

(3) In like manner in both Reform Bills the fundamental principle was carried through, that the several kinds of possession, according as the property was freehold, copyhold, or leasehold, retained the right of vote unconditionally *virtute possessionis*; the temporary occupiers of a real estate (tenants, lessees, and other occupiers) exercise the franchise only on the pre-supposed condition of a longer possession, and that they have been duly assessed and have contributed to the public taxes. But the duration of occupation was shortened in subsequent enactments, and the requirement of the prepayment of taxes was set aside by means of "compounding rates."

## XI.

### The Parliaments of the 19th Century down to the Third Reform Bill (1884-85).

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THE second Reform Bill, after its full development, settled the electorate for England and Wales according to the last returns (1885) as follows:—

I. In the Counties:—

Freeholders, Copyholders, etc.	514,226
Occupiers and Tenants . . .	452,493

II. In Boroughs:—

Householders and Leaseholders	1,592,225
Sub-tenants . . . . .	21,918
Freeholders . . . . .	37,589

III. Together, electors in counties, 966,719; in boroughs, 1,651,732; further 310,441 empowered to vote in Scotland; 224,018 in Ireland, and 30,642 for the Universities—total, 3,183,552.

Compared with the electoral system of the Continent, this presented no immoderate extension of the franchise. For England it sufficed to render visible and sensible, more especially in the region of political reforms, the

organic fault committed through displacing the foundations of the parliamentary constitution.

The group of *social reforms* which had already two decades earlier abolished the electoral qualification for Members of Parliament now directed its efforts against the remaining bulwarks of the old ruling class. On occasion of the army reform the qualification for officers and holders of commissions in the militia, as well as the right of nomination in respect of Lord-Lieutenant were abolished ; and in the standing army the entire system of purchase was swept away. In the Upper House proposals for divesting the Bishops of their legislative functions were rejected, but a beginning was made in that direction by the exclusion of Irish Bishops. In the same way a movement in favour of completing the Upper House by adding life Peers (1869) was rejected ; but on occasion of the reform of the Courts of the Realm certain life Peers were tacitly added to the House, and these appear but the forerunners of many others. More serious was the attitude of public opinion on occasion of every attempt at opposition on the part of the Upper House, the influential Press indulging in comments on the expediency of "another House" with utter disregard of the constitutional significance for England of such an institution as the House of Lords.

Through the unhappy condition of things prevailing in Ireland a violent blow was levelled at the economic privileges of the landlord class, the thoroughly radical land measures seeking to repair deep wrongs of past generations by trenching on the rights of ownership of the living generation. The further attacks levelled against family settlements, and against the obstacles



in the way of transference of landed property, have so far resulted only in introducing certain limitations of the former and a few simplifications of the latter. But the agitation against the immoderate extension of large estates, and in favour of the conversion of the relations of tenancy into those of a peasant freehold, under the cry of "free land," appears to be continually on the increase, and in coming years may assume a very threatening aspect.

The demand for an equality of religious rights again directed its energy against the Anglican Church in Ireland, whose status, as the solely legal State Church for a little more than one-tenth of the population, had become less and less defensible since the passing of the "Emancipation" Act. With comparatively slight opposition, the disestablishment of this Church, with partial alienation of her property, was effected in 1869, and this measure may be regarded as a first step towards a further process of disestablishment, which began in England with the abolition of Church rates in 1868.

Noteworthy at the same time is the steady progress of social reforms in favour of the working classes. Such are the more comprehensive extension of the Factory Acts, the thorough improvement of sanitary regulations involving heavy sacrifices for the community; the energetic enforcement of compulsory education with reduction of the charges for attendance, in view of their ultimate abolition; the rapid and progressive formation of School Board schools for children of all denominations; the gradual establishment, by comprehensive enactments, of a *jus æquum* and of a reciprocity of obligations as between employers and

employed ; the earnest solicitude manifested for the erection of better dwellings for the working classes and measures connected therewith, which although not preventing the revival of socialistic movements, may still help to keep them within due bounds.

The second group of *administrative reforms* has also assumed a more decisive character.

The *standing army* has become a normal institution of the land by the passing of an army organization law with settled rules, the right of annual ratification being reserved in view of possible modifications being called for; by the abolition of "Purchase," involving a sacrifice of £8,000,000; by the incorporation of the Indian Army with the armed forces of the empire ; by the settled organization of all branches of the army ; by the formation of reserves ; by the incorporation of the militia and volunteer corps with the reserve forces, and by the strictly uniform administration of the whole military system through the newly-instituted Secretaryship for War.

After long opposition the *judicial reform* has imparted a completely modern structure to the Superior Courts, by combining into one great Court of the Realm, in five divisions, and one Court of Appeal, the Lord Chancellor, Vice-Chancellors, and all the superior Judges, merging the Courts of Common Law, Equity, and Ecclesiastical and other Courts into a system, as near as possible, of uniform jurisprudence, and an entirely refashioned mode of procedure.

In the province of the *finances* important measures have been the combination of the fragmentary taxing-department into two chief Revenue offices, the extension

of the government postal system by the purchase of all private telegraph lines, and the further extension of State supervision to the railways.

In regard to *Home matters*, the municipal administration has steadily advanced by means of elected boards. The charge of maintaining the poor has been transferred from the Parishes to the small district Unions. The control of Highways and Boards of Health is being progressively incorporated with the same system. The new unions of combined parishes have been made to coincide as far as possible with the official district of the jurisdiction of the Justice of the Peace (the hundreds, or divisions, as they are now called). In the boroughs legislation has been directed towards a possible merging of the town councils with the special Poor, Highway, and Health Boards. The bureaucratized system of the Home Department was combined in 1871 into a new Ministerial Department—"Local Government Board." A similar course, although in smaller circuits, has been adopted by the Elementary School organization. Unfortunately with these innovations disappear the last remnants of local communal life. The parish sinks into a mere district for the levying of rates and the election of boards. As the general result of these combinations, according to the Census of 1881 there now exist for the economic communal administration: 242 Towns possessing a municipal organization; 649 District Unions, 424 Highway Unions, 1,006 Urban Sanitary Districts, 577 Rural Sanitary Districts, 2,051 School Unions, 5,064 Parishes for administration of Highways, 14,946 Parishes for Poor administration, 13,000 Ecclesiastical Parishes and a few other less numerous

organizations, which run great risk of being merged at the next reform into a mere mechanically uniform system of boards, under control of a central department. At the same time the boards, with their universal suffrage and ballot, are everywhere preparing the way for further parliamentary reform.

For University reform there now followed the more sweeping University Reform Acts of 1880, and for popular instruction the comprehensive National Education Acts of 1870, 1873, and 1876, which, by the aid of considerable public grants, consistently developed the Elementary School system, with energetic application of the compulsory principle, uniform introduction of committees for school administration and inspection, and equality of rights for all denominations. In Parliament itself utterance was given to the keynote that, by the vast extension of the franchise, "our future masters" should at least be to some extent educated for their future mission.

By the thorough eradication of the abuses of party patronage, the reform of the Civil Service has, on the whole, been carried out with fairly good results, although perhaps in a somewhat formal spirit.\*

In this department also an unbiased judgment cannot withhold recognition of the practical insight and vigour of such parliamentary legislation, so far at least as concerns the attainment of the object immediately in view,

\* The outside public may also feel grateful for the improved codification of Parliamentary Statutes effected by a duly qualified standing Commission, which has swept away as obsolete a vast body of antiquated parliamentary enactments, thus rendering possible the discovery of statutes really useful for practical purposes.

and apart altogether from any consideration of the ultimate consequences of these measures.

But the dark side is revealed in the third department of *organic legislation* bearing on the communal and parliamentary constitution, in which the dissolution of the coherent elements advances at an accelerated rate.

During the deliberation concerning the Reform Bill of 1867, the Conservatives had made one more serious effort to insist on the "payment" of the rates as a preliminary condition, and as a standard whereby to determine the exercise of all electoral rights. The difficulty of carrying this out consisted in the fact that the rights of election were hitherto based on the quality of "tenure," as held by owner, leaseholder, or tenant. But a clause was passed to the effect that the occupier, for whom the owner has undertaken the compounding rate by payment of the taxes, was to have a vote only on "personally" undertaking to pay them. But the influence of recognized habit and of convenience, the presumed difficulty of execution, and above all the desire of social equality, contrived to remove this obstacle. The law for assessing the Poor-rate (1869) promptly reverted to the principle that the occupier is to have the right of vote, whether he pay the tax himself or "through his landlord," provided only that somebody pay. This solution may certainly be recommended for its simplicity and for its seemingly humane consideration, which emancipates the working classes from tax on rent and all direct communal taxes, just as the higher classes have partly released themselves from all personal obligations. But when the consequences

were seen on a large scale, it became at once evident that, by exonerating the citizen from all civil duties, the Legislature itself left nothing but his "common manhood" as the sole basis of his claim to the highest political rights. The reduction of the civil status in the State to the abstract notion of the "citizen," the dissection of Society into minute fragments, hitherto usually charged to the account of one political party alone, was here carried out by both parties alike, in their eager competition for the favour of public opinion. Henceforth there is no longer any fundamental principle which can be opposed to any demand for the suffrage, not even to that of women and minors. There is thus opened up a veritable chaos of innovating theories connected with reform. For the inborn right thus constituted consistently claims its practical application as an act of *personal* sovereignty, independently of connection with any particular district, without any kind of responsibility, and by the ballot, which in fact soon became the all-engrossing question of the moment, and followed immediately upon the second Reform Bill (1872). The House of Lords made a further show of opposition, but yielded assent to the bill in the following session, looking upon it as a temporary measure, while under such mental reservation the Ballot still, from year to year, holds its ground down to the present time.

Under these circumstances proposals for *enlarging* the franchise followed directly after the passing of the second Reform Act, the rage for equality being now turned against the equality of representation in borough and county. Why should there be in the one case a

uniform equality in regard to householders, and in the other a qualification? The cry of "Equality of Franchise" already made itself heard in 1872 with fresh proposals for reform. Still more far-reaching was the demand for equality of electoral districts, that is, for grouping an equal number of electors in the several electoral districts. Pitt's old principle that electoral districts should be formed according to an average number of inhabitants and the amount of taxes paid, now seemed to be an already secured platform. Against the impetuous torrent of all these demands Parliament was unable to hold out for more than half a generation, Government introducing the *Third Reform Bill*, the Representation of the People's Act in 1884, and the measure for the Distribution of Electoral Districts in 1885, which with some appended enactments jointly form a group of nine new constitutional laws.

I. In regard to electoral *districts*, the equalization, in other words, the radical remodelling of electoral districts on the basis of an average equality of population, was now carried into effect. For this purpose 79 towns with less than 15,000 inhabitants were deprived of the right of returning a separate member; 36 towns, with less than 50,000, retain only 1 member; 14 large towns obtain an increase of members in proportion to the population; 35 towns of about 50,000 obtain a new franchise. The counties have been throughout divided into "electoral divisions" of about equal population, each returning 1 member. This single-seat system has also been uniformly carried out in the boroughs, with the exception of 28 middle-sized towns, which have been left with 2 members. Thus the County of

York forms, for instance, 26 electoral divisions; Liverpool, 9. In a word, the result is that the counties return 253 members (formerly 187), the towns 237 (formerly 297). The average population of the county electoral divisions is now 52,800 (formerly 70,800); the average number of the town electoral divisions 52,700 (formerly 41,200).\*

II. In respect to the *franchise*, the Third Reform Bill is founded on the simple principle of equalization, in such wise that the right based on payment of house duty in boroughs has now been extended to counties. The occupation of a dwelling house, or of a separate abode, or of an unfurnished lodging of £10 yearly value, suffices also for the county franchise. In order to effect uniformity with the towns, the qualification of the occupier in counties has been reduced from £12 to £10. All formal electoral rights have been maintained, as in all previous Reform Bills; and in addition, a few electoral privileges, for instance, in favour

\* The schedule of the electoral districts appended to the Bill gives the constituent elements of each. The electoral districts of the counties consist, as a rule, of one or more sessional divisions, which generally coincide with the district poor law unions; then of one or more municipal boroughs, or former parliamentary boroughs, and, mostly, of a large number of parishes, which were detached from other unions in order to round off the new electoral district. The town electoral districts are at least compounded of unseparated wards, but partly also considerably extended by addition of a rural population. The electoral bodies thus newly amalgamated brought about, under the present conditions, radico-liberal majorities, at first very disunited among themselves, but soon capable of action through the decided predominance of Radical elements. So great is the confusion of political principles, owing to each fragment looking only to its immediate interests, that this most hazardous feature of the equalization system was carried by the Conservatives themselves.



of the occupiers of official residences, have been newly created.\*

III. In regard to the *mode* of elections, the hours for voting were generally fixed at from eight in the morning to eight at night, during which the voter's ticket, based on the system of nomination papers,

\* Omitting the less important details, the franchise is constituted as follows:—

(1) By means of the preliminary conditions common to all, there remain excluded: minors, women, such as have been sentenced to more than twelve months' hard labour, the paid police corps, and paid election agents.

(2) Common to the counties and boroughs is the "Householder's Franchise," for every inhabitant, occupier of a dwelling house, or of a self-contained abode during twelve months, assessed to the communal rates during this period. To this is added the right of vote of "lodgers," *i.e.*, of sub-tenants holding an abode of £10 value (reckoned as unfurnished) under the preliminary condition that they are inscribed on the electors' lists.

(3) Special electoral rights for counties:—

*a.* Freeholders' qualification; freeholders of 40s. value, if in possession for six months, or acquired by inheritance, etc.; freeholders for life, only under preliminary condition of actual possession, or inheritance, etc., without which only freeholders of £5.

*b.* Copyholders of £5 value, in possession for six months.

*c.* Leaseholders (leases for at least sixty years) of £5 value, if in possession for twelve months.

*d.* £10 occupiers; tenants-at-will or other possessors of land of £10 value, if in possession for twelve months, assessed to all communal taxes during the same period.

(4) Special electoral rights for boroughs; the £10 occupation has, for the sake of equality, been transferred also to towns, for every occupier of lands of £10 value, etc.

The election lists are yearly posted up in September and October, and the requisite periods of occupation reckoned from the previous 15th July. The requirement of a longer possession is considered as complied with, if the possession is dependent on inheritance, marriage settlement, or office. The requirement of assessment to the municipal taxation is similarly considered as complied with, if the occupier is assessed himself or "by his landlord." But the tax must also be paid for a stated period.

may be deposited according to the convenience of the person empowered to vote. The further amendments of the Bribery at Elections' Bill, and the Proceedings at Elections, are of little importance.

The number of the newly-enfranchised electors has been somewhat doubtfully estimated at about two millions. One thing only is certain, that the newly-added are still less qualified to keep the traditional parliamentary government alive than the previous two millions.

The enthusiasm with which the first Reform Bill was carried, had already toned down at the second. The third passed with a feeling of resignation in both camps, after each had, however, by exhausting all means of agitation, endeavoured to get the better of its rival.

The hope entertained by the Conservatives that the increase of members for counties, and the division of the large towns into separate electoral districts, would redound to their advantage, cannot be realized. For any such advantage is far outweighed by the fact that the gentry acting as Justices of the Peace lose their stronger cohesion in the county through the General Sessions of the peace, and find themselves henceforth divided into smaller sessional districts, confounded and set on a level with the Poor Law Boards, in their loose connection with the parishes. To this is added the fatal lack of a landed yeomanry and of a settled agricultural population. Both parties have henceforth rather become doubly dependent on the interests and fluctuating opinions of the day.

As in the case of ecclesiastical Reformation, England

follows also in the transition to the new order of Society a precisely opposite course to that of Continental nations. Although standing on a higher level of development, she reached towards the close of the nineteenth century a position analogous to that of the Continent at the beginning of the formation of its constitutions. In name, at least, there certainly still exists a House of Commons, but there are no longer any *Communitates*, no longer any of those old-fashioned associations bound together by a sense of duty, but only social groups which find their bond of union in the Press, and in the right of association. After the disappearance of that control, which in the old *Communitates* moderated individual interests by a constant consideration for the requirements of the moral and legal orders, and which accustomed electoral bodies to that measure of self-restraint, political insight, and respect for the law with which parliamentary party rule might honourably exist, those social views of life alone now remain effective, which concern themselves only with the struggle for rights, and which, like a piece of clockwork, are incessantly moving in one and the same direction everywhere throughout the cultured peoples of modern times.

The Socialistic impulse towards equality at all times advances its claims primarily on the ground of fundamental rights. "Equality and freedom" of the person, of property, of the right of association, of the Press, freedom of Churches, of denominational teaching, etc., are all self-justified and immutable assumptions of modern Society, but which, as abstract party cries in unequal relations, lead to contradictory claims that can never be satisfied.

The Socialistic impulse towards "equality" demands, under the name of self-government and communal freedom, not corporations bound together by the ties of duty for the responsible administration of the laws and business of the State, but freely-elected boards, invested with autonomous authority to pass resolutions, and to appoint to offices.

The Socialistic impulse towards equality exhausts its theories of a constitutional State in the free election of a popular House, which, as Administrative Council of the nation, frames autonomous resolutions and appoints the ministers who are to carry them into execution.

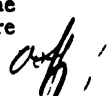
But when the Socialistic impulse towards equality gravitates from the middle to the working classes, it claims further an equality of property, and a fixed standard of value for labour, thus clashing with the political impulse towards equality, and leading to flagrant and irreconcilable contradictions in the essential conditions of Society, Church, and State, but affording the demagogue a free field in all directions.

Apart from an earnest and uniform performance of *personal* civic duties in the State, no means can anywhere or at any time be found to stem the elementary force of these currents. If after the second Reform Bill this striving for equality asserted itself with redoubled energy, after the third Reform Bill a triple force of impact, and a more acute character will be imparted to social, administrative, and political reforms, rendering the Constitution still more democratic, the administration still more bureaucratic. For the "Era of Radical Parties" has now arrived, and with it the sway of the Caucus and of political wirepullers,

whatever little natural inclination the English people may have for aping these American institutions. Street riots now no longer, as in former days, constitute the danger of the living generation, thanks to the general improvement in public instruction. But the peril now lies rather in the puritanical fanaticism displayed in favour of equality, a fanaticism which follows the track of Bentham rather than of the French Revolutionists, but which will on that account penetrate all the more deeply.\*

Against all this the ever-recurring objection might still be raised, that after all the present structure of the electoral bodies is only such as, without any great risk, has more than once been already tried on the Continent, under strong monarchical initiative and guidance. But it must be borne in mind that the tenfold increase of votes in the lapse of half a century has a very different import for England, since the existence of Ministries and the course of State government have become almost exclusively dependent on the House of Commons. After the disappearance of all means for moderating the conflicts of social interests, *this* kind of party rule falls into a helpless dependence on unforeseen combinations of social interest, on relatively violent prejudices, on political agitation, and the tactical skill of party

\* It is again a self-delusion, if any one believes that the thoroughly-ingrained aristocratic bias of the nation will prevent England from passing through these crises. The only result of this sentiment will be that famous old historic names will be found at the head of the Radical movement just as in the struggles of the seventeenth century, to which the near future will in all likelihood offer some parallels.



movement, to which, even under the Second Reform Bill, both Disraeli and Gladstone owed their respective positions.

The twofold division into a Conservative and Liberal parliamentary party, hitherto needed for the parliamentary rule, in reality now no longer exists. For a length of time, side by side with the two parties, there have existed (as in Germany) radical, denominational, national sections, having each their special interests, with "independent" members and others, whose number is slowly, but steadily, on the increase. The bearing of the English Parliament has already become so changed under the influence of these factors, that it has been found expedient to impose certain restrictions on the liberty of speech, once even (in 1881) by the exclusion of thirty-two fractious members. (A special measure for controlling freedom of debate was also passed by the Salisbury Government in 1887.) Already since the Reform Bill of 1867 the dismemberment of parliamentary parties has substituted for a party government on traditional lines the quasi-dictatorial position of a single statesman, as personal interpreter of the actual average of "public opinion." Hence till the advent of Radical Governments Coalition Ministries alone will be possible.

In this state of things, a comparison with the older experiences of the Continent is again forced upon the student. Here we again see the same amazing short-sightedness of the propertied classes for the crises pending in the near future, due to the fact that in limited social circles the displacement or disturbance of the main relations is not readily perceived. The inactive

Peer, who in previous generations formed the exception, has become an every-day phenomenon at a time when the very existence of the House of Lords is at stake. An irresistible desire to wander abroad has taken possession of the landed gentry, at a time when their presence on their estates has become more necessary than ever, in order not utterly to lose their waning local influence. The daily Press and current literature are engaged with unwearied zeal in every department of natural and moral science, as if the great vessel of the English State had already been safely piloted into a harbour of refuge. The daily Press dwells in a fool's paradise of self-oblivion and self-deception as to the vital conditions of the State, as if the question of "to be or not to be" of the parliamentary constitution were still to be decided with a sort of papal infallibility by mere force of public opinion. All moves as formerly in France and Germany when on the very brink of the precipice.

But at the same time our earlier experience points to the solution of the problem. Little as the public opinion of the day seems inclined to open its eyes to the downward tendency of the State, all the more wonderful and irresistible will be the reaction when the political and social catastrophes have occurred, whether they proceed from within or from without, or, as is wont, from both simultaneously. The outside observer may perhaps venture to prophesy that it will be hard to recognize the present public opinion at the close of the century, and that the leading periodical Press of the day would be struck dumb were it allowed to read itself at that date, and to see how disastrous for the destinies of the

nation had been its blind worship of public opinion. Assuredly the propertied classes will not display their finest qualities while engaged in the defence of their property, although it may be otherwise with the nation as a body. The blows of fate and hard trials still evoke the real spirit of heroic and noble races ; for then only is aroused in its full force the slumbering sense of duty towards the State. In such times of trial France and Germany alike were found capable of submitting to the heaviest sacrifice, which it is at all in the power of society to endure, in the universal obligation to personal military service. Surely the courage, the strength of character, and the practical insight possessed by the English people, as unfolded in the thousand years' evolution of its life history, afford no less assurance that here also the sense of public duty will be reawakened, and will succeed in reconstructing the shattered framework of its free political constitution. For the organism of the State shares with the human frame itself the faculty of restoring or reconstructing the impaired or mutilated functions of the system.\*

\* The foregoing estimate of pending events was deduced by the author from the elements of the present Constitution in October 1885. He naturally avoided, however, entering into the several questions of the day, because to anticipate the sequence of events seems as difficult as weather forecasting. At the same time, the reader may perhaps be glad to have the author's view on the Irish question, as recently expressed by him in the *Deutsche Revue* (Dresden, March 1887) :—

"The thorn in the side of the parliamentary constitution is Ireland, whose relations of dependency have reached a strained point, partly through former wholesale confiscations, partly through subsequent centuries of neglect and administration to the profit of England. The dispossessed native population is agitating for an agrarian legislation intended to create a national middle class with hereditary rights to the possession of the land.



The next task for organic legislation is the now necessary remodelling of the county administration, in which the revival of personal civil duties in the "self-government" has for England almost the same signifi-

But the Stein-Hardenberg agrarian enactments, which may seem to be the most obvious model, and which have, in fact, been frequently appealed to for such legislation, are in no way applicable to Ireland. Those Prussian measures conferred free possession on a peasantry, which in lieu of knightly tenure had for ages paid the land taxes, and discharged the duty of personal military service. The legal right to a share in a 'distributed estate' was here the same as in mediæval times, when the feudal lords claimed and obtained the hereditary possession of their fiefs. The new Irish land measures, on the contrary, involve partial confiscation of a private income, exclusively on the ground of political and economical expediency, for which no legal title can be found, and consequently to which no limit can be assigned. The thirst for plunder thereby awakened will next spread to Wales, Scotland, and old England itself, and, combined with the assaults on the English State Church, must drive the large landowners and the ruling class from the Conservative ranks, and constitute them a reactionary party. But the social tendency thus introduced can only have the further consequence of separating Ireland from its parliamentary connection with Great Britain. The already sufficiently loose cohesion of both countries must completely lose the preliminary conditions of a common popular representation through the hostile attitude of the two powerful Churches, and the intensified animosity of the two races. This severance of the Irish political State will even become necessary in order to restore to the British Parliament that homogeneous basis on which depends the active efficiency of the parliamentary body and its parties. On the other hand, such a system of 'Home Rule' will have to be conferred on Ireland as may be possible for a predominant Celtic nationality, and for a population broken into factions by religious and racial antagonism. This form of the future 'imperial province' may possibly approximate to the 'Napoleonic Constitution' with a Parliament whose members are mostly nominated by the Crown, and an administration through provincial Prefects aided by a Council, who have in some districts already acquired a greater degree of independence, giving hope of the introduction of a genuine system of self-government in the next generation. That the highly-gifted Irish people, through their lack of self-control, are unsuited for the direct adoption of English institutions, is evident even from the experiences of the United States of

cance as the universal duty of military service for the continental states. In the very performance of this task the opulent classes will at last more clearly perceive the process of disintegration at work in the body politic, and it is conceivable that under the guiding influence of the monarchy the process itself may be arrested and a change for the better introduced. At all events, the Crown will ward off the extreme dangers of a democratic control of the *foreign affairs* of such a widespread empire, having already with wise forethought resolutely upheld its prerogative in this department (1850). In the life of nations as of the individual, the true friends are those who, instead of flattering, forecast the pending storm. But, however uniform the direction of the social movement in the Central

America. That such organic transformations, according to the plans of Gladstone, could be simultaneously carried out, might seem possible from the example of Germany under a strong monarchy. But under the system of party rule they can run their course only by fits and starts amid the fierce convulsions of the whole social body itself. For the present party programmes they must diverge too far in both directions, thus conjuring up the approaching 'era of radical parties,' which will alone be capable of carrying Irish Land Bills, sweeping reforms of land-ownership and of the Upper House, together with a certain 'Dis-establishment of the English Church.' The ensuing reactionary movement will probably be the first capable of conferring a suitable constitution on the 'Imperial province of Ireland.' Then under a more moderate party movement some prospect may be entertained that in due course a fresh beginning may be made with the inner reconstruction of the Constitution on the basis of the new and again coherent *Communitates*, together with a renewed strengthening of the influence of the propertied classes and a return to normal parliamentary action. During its long and glorious history the British people has happily passed through many dangerous crises. But the long cherished hope that therefore the great social conflicts of the Continent may be avoided through the re-constitution of modern Society, will in the near future prove to be a self-deception of public opinion."

European world also, all the more divergent has been the outcome, according to the varied character and previous political history of the several nationalities.

But while it may be inevitable that for their well-being the life of nations as of individuals should undergo such trials, the whole past history of England contemplated as the creation of the moral and legal consciousness of the nation in its thousand years' development, justifies the confidence, that she will weather the pending storms, discovering in her own past the materials for the reconstruction of her free political constitution, as did the German nation, whose latent power has at all times resided in the Communal system.



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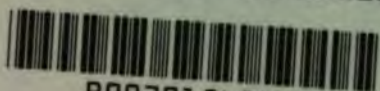
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